TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 549.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

AUGUSTE RICHARD AND WILLIAM E. ISELIN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 6, 1874.



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1 UNITED STATES OF AMERICA:

[SEAL.] The President of the United States the judges of the circuit court of the United States for the district of New York, greeting.

Because in the records and proceedings, and also in the rendition of the judgment of a plea, which is in the said circuit court, before you, between Auguste Richard and William E. Iselin, plaintiffs, and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said Chester A. Arthur, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, 1874, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

2 Witness the honorable M. R. Waite, Chief-Justice of the said Supreme Court, the 18th day of September, in the year of our Lord one thousand eight hundred and seventy-four.

KENNETH G. WHITE, *Clerk.*

The foregoing writ is allowed September 18th, 1874.

SAML. BLATCHFORD.

3 (Indorsed:) U. S. Supreme Court. Chester A. Arthur, pltff. in error, v. Auguste Richard and Wm. E. Iselin, defts. in error. Writ of error filed Sept. 18th, 1874.

UNITED STATES OF AMERICA,
South'n Dist. of New York:

4 I, Kenneth G. White, clerk of the circuit court of the United States in and for the south'n district of New York, second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one to 39, inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of Chester A. Arthur, plaintiff in error, vs. Auguste Richard and William E. Iselin, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the south'n district of New York, in the second circuit, this 30th day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the said United States the ninety-ninth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

5 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term

of April, 1874, to wit, of the 27th day of May, in the year of our Lord one thousand eight hundred and seventy-four.

Witness the honorable Lewis B. Woodruff, one of the judges of the said circuit court.

KENNETH G. WHITE, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the 27th day of May, 1874, in the April term, 1874, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, came Auguste Richard and William E. Iselin, by Webster & Craig, esqrs., their attorney, and brought into the said court, before the aforesaid judges thereof, then there, their certain declaration against Chester A. Arthur, being in custody, &c., of a plea of trespass on the case upon promises; which said declaration follows in these words, that is to say:

6 THE UNITED STATES OF AMERICA.

Circuit court of the United States for the southern district of New York, in the second circuit, of the day of May, in the year of our Lord one thousand eight hundred and seventy-four.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Auguste Richard & William E. Iselin, plaintiffs in this suit, come here into court, and, by Webster & Craig, their attorneys, suggest and give the court now here to understand and be informed that heretofore, to wit, on the 27th day of May, instant, an action was commenced in the superior court of the city of New York, according to the laws of the State of New York and the rules and practice of said court, in such case made and provided, in favor and in the name of the said plaintiffs against Chester A. Arthur, the defendant herein upon, and for the same cause of action hereinafter set forth, and the summons therein was filed in the clerk's office of the said superior court on the same day.

That the defendant afterward, by George Bliss, esquire, his attorney, duly appeared in said action, and such proceedings were there-
7 upon had; that afterwards, and on the day of May, in the year of our Lord one thousand eight hundred and seventy-four, the said action was, in due form of law, removed by writ of certiorari for further prosecution and trial into this court, according to the act of Congress in such case made and provided, and the clerk of the said superior court did thereupon return the said writ, with the summons aforesaid, and did file the same in this court, according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore, let the further proceedings and trial in this action against the defendant be continued in this court.

And the said plaintiffs accordingly, by Webster & Craig, their attorneys, complain of the defendant in this suit, being in custody, &c., of a plea of trespass on the case for promises, for that, whereas, the said defendant heretofore, to wit, on the day of the date of this declaration, to wit, at the city of New York, in the district aforesaid, was indebted to the said plaintiffs in the sum of four hundred and seventy-two and $\frac{92}{100}$ dollars, lawful money of the United States of America, for duties
8 on certain merchandise, to wit, dress-goods imported into and

entered at the collection-district of the United States for the city of New York, on or about the following dates, to wit: the 16th day of March, and 7th day of April, in the year one thousand eight hundred and seventy-four, in the following ships or vessels, to wit, the steamers Pereire and Silesia, from Havre & Hamburg, unlawfully demanded, exacted, and received, at the city of New York aforesaid, in the district aforesaid, by the said defendant, then collector of the customs for the district aforesaid, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest in writing in due form of law.

And, being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the same day & year last aforesaid, at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the sum of money above mentioned when he, the said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of one thousand dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of the said defendant, and for other money, by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant, and for other money by the said defendant, before that time, had and received to and for the use of the said plaintiffs.

9

And, being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when he, the said defendant, should be thereunto afterwards requested.

Nevertheless the said defendant, although often afterward requested so to do, has not, as yet, paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same, or any part thereof to the said plaintiffs, the said defendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiffs of one thousand dollars.

And therefore the said plaintiffs bring suit, &c.

WEBSTER & CRAIG,
Attorneys for the Plaintiffs.

10 Circuit court of the United States for the southern district of New York.

AUGUSTE RICHARD ET AL.
vs.
CHESTER A. ARTHUR.
} No. 4.

NEW YORK, *May* 28, 1874.

GEORGE BLISS, Esq., *Defendant's Attorney:*

SIR: Please take notice that the following is a bill of particulars of the plaintiffs' demand in this case, and for the recovery of which this action is brought by reason of money illegally exacted of the plaintiffs by the defendant, as collector of the port of New York, on merchandise imported in the vessels and at the dates named in the annexed schedule.

Truly, yours, WEBSTER & CRAIG,
Plaintiffs' Attorneys.

11 *Bill of particulars.*

Names of importers	Richard, Iselin & Co.		
Description of merchandise	Dress goods.		
Place whence imported	Havre	Hamburg.	
Name of vessel	Pereire	Silesia.	
Date of invoice	Feb. 26, 1874	Feb. 19, 1874	
" " entry at custom-house	Mar. 16, 1874	Apr. 7, 1874.	
" " payment of duties	" " "	" " "	
" " filing protest	" 23, "	" 16, "	
" " appeal to Sec'y of Treasury	" 28, "	" 24, "	
" " decision on appeal	None	None	
Amount of excess claimed	157.29		315 68
			$472 97

12 *Plea.*

United States circuit court, southern district of New York.

CHESTER A. ARTHUR
ads.
AUGUSTE RICHARD & AL.

And the said defendant, Chester A. Arthur, by his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise, in manner and form as the said plaintiffs in this suit have above thereof declared, against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

GEO. BLISS,
Defendant's Attorney.

To WEBSTER & CRAIG, Esq.,
Plaintiffs' Attorney,.

13 Circuit court, southern district of New York.

AUGUSTE RICHARD & OTHERS
vs.
CHESTER A. ARTHUR.
No. 4.

It is hereby consented that a trial by jury be waived in this case, and that the same be tried by the court without a jury as provided by statute.

Dated N. Y., June 3d, 1874.

GEORGE BLISS, *U. S. Atty.*
WEBSTER & CRAIG,
Plff's' Attys.

14 And now at this April term of the said circuit court of the United States for the second circuit, and in the southern district of New York, before the judges of said court, come the said plaintiffs, by their attorneys, Webster & Craig, and the said defendant, by George Bliss, his attorney, on the 3 & 4th days of June, 1874, at said term at the court-rooms of said court in New York City, at a session of said court held by Hon. Nathaniel Shipman, United States district judge, one of the judges of said court, the said issues coming on to be tried

according to the form of the statute in such case made and provided; and thereupon a stipulation having been *held* by said parties, waiving, according to the statute in such cases provided, a trial by jury, and stipulating for the trial and determination of said issues by the court without the intervention of a jury, the said court did find and decide that the said defendant did undertake and promise in manner and form as the said plaintiff hath complained against him.

And thereupon, said court, by reason of the premises, assesses the damages of the said plaintiff, over and above their costs and
15 charges by them about their suit in this behalf expended, to four hundred and eighty-one $\frac{73}{100}$ dollars.

Therefore, it is considered and adjudged that the said plaintiffs do recover against the said defendant his said damages, costs, and charges, in form aforesaid determined, and by the said court now here adjudged, that is to say: the said sum of four hundred & eighty-one $\frac{73}{100}$ dollars, damages, and the sum of forty-six $\frac{92}{100}$ dollars, taxed as plaintiffs' said costs and charges, amounting together to the sum of five hundred & twenty-eight $\frac{65}{100}$ dollars.

Judgment signed this 15th day of September, 1874.

R. E. STILWELL,
Dep. Clerk.

(Endorsed:) U. S. circuit court. Auguste Richard, William E. Iselin, agst. Chester A. Arthur. Judgment-record. Webster & Craig, plffs.' attys.—Filed Sept. 15th, 1874.

16 *Bill of exceptions.*

U. S. circuit court.

AUGUSTE RICHARD AND OTHERS
against
CHESTER A. ARTHUR.

This cause came on for trial at the April term of the U. S. circuit court for the southern district of New York, to wit, on the 3rd & 4th days of June, 1874, in said term, before Hon. N. Shipman, judge, a jury having been duly waived by the respective parties, pursuant to the act of Congress.

Plaintiffs' counsel then read the following agreed statement of facts:

17 *Agreed statement of facts.*

This is an action at law brought to recover from the defendant, collector of the customs at the port of New York, an alleged excess of duties on imported goods exacted by the defendant and paid by the plaintiffs under protest.

On the 16th day of March, 1874, the plaintiffs entered at the custom-house an invoice of all-wool dress-goods imported from France, in the steamship Pereire, from Havre, the value of which was invoiced in francs of the currency of France, amounting, together with the charges and commissions, to 5,629.30 francs. By an act of Congress passed May 22d, 1846, § 1, (9 Stats. at Large, p. 14,) in force at the time of the passage of the act of March 3, 1873, hereinafter referred to, it was provided that "in all computations at the custom-house, the franc of France and of Belgium shall be estimated at 18 cents 6 mills." At this rate of

estimation of the French franc in money of account of the United States, the dutiable value of these goods, consisting of 5,316 square yards, was $1,047, or less than 20 cents per square yard. By the tariff act of March 2, 1867, § 2, goods of this description, when the dutiable value is less than 20 cents per square yard, are subject to an ad-valorem duty of 35 per cent., and an additional duty of 6 cents per square yard; but from this amount 10 per cent. is to be deducted by the operation of an act passed June 6th, 1872. Computing the franc at $18\frac{6}{10}$ cents, the amount of duty that could be levied on the 5,316 square yards of the above-mentioned importation was $616.43.

March 3, 1873, Congress passed an act, entitled "An act to establish the custom-house value of the sovereign or pound sterling of Great Britain, and to fix the par of exchange." (17 Stat. at Large, p. 602.) Prior to the 1st day of January, 1874, the Director of the Mint, acting under section 1 of this law, estimated and prepared two tables, respectively marked A and B, in the circular of January 1, 1874, hereinafter mentioned. On the 20th of December, 1873, the Secretary of the
18 Treasury issued to the collectors of customs, including the defendant, a circular letter of instructions, embodying the table A, a copy of which is hereto annexed, marked "Ex. No. 1." On the 1st day of January, 1874, the Secretary of the Treasury, by a circular letter of that date, a copy of which is hereto annexed, marked "Ex. No. 2," proclaimed the tables A and B, theretofore prepared by the Director of the Mint, in compliance with the provisions of the first section of the aforesaid act of March 3, 1873.

The defendant, claiming to act under the instructions of the Secretary of the Treasury, given in and by the circulars aforesaid, in determining the dutiable value of the plaintiffs' goods, estimated the franc at 19.30 cents, which estimate carried the dutiable value of the goods above 20 cents per square yard, and by the provisions of the existing tariff-laws subjected them to an ad valorem duty of 40 per cent. and an additional duty of 8 cents per square yard, less ten per cent., to be deducted under the operation of the act of June 6th, 1872. Computing the franc at 19.30 cents, the amount of duty that could be levied on the 5,316 square yards of the above-mentioned importation was $773.72, which amount the defendant exacted, and the plaintiffs paid under protest—the plaintiffs claiming that the franc should have been estimated at $18\frac{6}{10}$ths cents, and no more. The plaintiffs claim to recover the difference between the amount of duties which they offered to pay and the amount exacted from them, namely, $157.29.

On the 7th day of April, 1874, the plaintiffs made a subsequent entry of goods of the same description, also imported from France in the steamship Silesia, from Hamburg, the value of which was also invoiced in francs, of the currency of France, amounting, together with the charges and commissions, to 11,297.55 francs. Under the act of May 22d, 1846, § 1, above referred to, estimating the franc at 18 cents 6 mills in money of account of the United States, the dutiable value of the
19 last-mentioned goods, consisting of 10,650 square yards, was $2,101, or less than 20 cents per square yard, and at such dutiable value the goods were subject, by the existing tariff acts, to an ad-valorem duty of 35 per cent. and an additional duty of 6 cents per square yard, less 10 per cent., to be deducted as above mentioned. Computing the franc at $18\frac{6}{10}$ cents, the amount of duty that could be levied on 10,650 square yards of these goods was $1,236.92. The defendant, claiming to act under section 1 of the act of March 3, 1873, above referred to, and under the Treasury instructions above referred to, in determining

the dutiable value of the plaintiffs' last-mentioned goods, estimated the franc at 19.30 cents, which estimate carried the dutiable value of the goods above 20 cents per square yard, and by the provisions of the existing tariff-laws subjected them to an ad valorem duty of 40 per cent. and an additional duty of 8 cents per square yard, less 10 per cent., to be deducted as above mentioned. Computing the franc at 19.30 cents, the amount of duty that could be levied on the 10,050 square yards of this importation was $1,552.60, which amount the defendant exacted and the plaintiffs paid, under protest, the plaintiffs claiming that the franc should have been estimated at $18\frac{6}{10}$ cents, and no more. The plaintiffs claim to recover the difference between the amount of duties which they offered to pay and the amount exacted from them, namely, $315.68.

It is agreed that, in respect to both of the above-mentioned exactions of duties, the plaintiffs duly and seasonably protested upon the ground that, in ascertaining the dutiable value of their goods, the franc of France could not be lawfully estimated in money of account of the United States for the purpose of levying duties on imported goods at more than $18\frac{6}{10}$ cents; also that, from the decision of the defendant, estimating the franc at 19.30 cents, the plaintiffs duly and seasonably appealed to the Secretary of the Treasury, and that the Secretary affirmed the
20 decision of the defendant, and dismissed the appeal, before the present action was brought; and that this suit was brought within the time prescribed by law.

Either party may read in evidence at the trial any papers from the custom-house relating to the above-mentioned importations, which will be competent evidence on the trial of the issue in this action, and may also read or refer to the circular instructions of the Secretary of the Treasury above referred to.

The case shall be submitted to the court on the pleadings and the foregoing statement of facts. If the court shall find, as matter of law, that in determining the dutiable value of the said several importations the defendant ought to have estimated the franc at $18\frac{6}{10}$ cents, judgment shall be entered for the plaintiffs in the sum of $472.97, with interest, as damages, with costs. But if the court shall find, as matter of law, that in determining the dutiable value of the said several importations, the defendant could rightfully estimate the franc at 19.30 cents, judgment shall be entered for the defendant, with costs.

Dated, New York, May 28, 1874.

GEORGE BLISS,
U. S. Atty.

WEBSTER & CRAIG,
Plaintiffs' Attys.

21 *Agreed statement of facts, Ex. No. 1.*

Circular to collectors of customs and others.

[1873. Department No. 146. Secretary's Office]

TREASURY DEPARTMENT,
Washington, D. C., December 20, 1873.

The following list of standard values of foreign currencies in the money of account of the United States will be used in the computation of customs duties from and after the first day of January, 1874, and until otherwise provided by law and regulations, viz:

Foreign moneys of account, and their values in United States money of account.

Country.	Monetary unit.	Standard.	Value in U. S. money of account.
Argentine Republic	Peso fuerte	Gold	$1.0000
Austria	Florin	Silver	.4760
Belgium	Franc	Gold and silver	.1930
Bolivia	Dollar	Silver	.9650
Brazil	Milreis of 1,000 reis	Gold	.5456
British Possessions in North America	Dollar	Gold	1.1000
Central America	Dollar	Silver	.9650
Chili	Peso	Gold	.9123
China	Tael	Pure silver	1.6100
Cuba	Peso	Gold	.9258
Denmark	Crown	Gold	.2680
Ecuador	Dollar	Silver	.9650
Egypt	Dollar of 20 piasters	Silver	1.0039
France	Franc	Gold and silver	.1930
Great Britain	Pound sterling	Gold	4.8665
Greece	Drachms	Silver	.1930
German Empire	Mark	Gold	.2382
Hayti	Dollar	Silver	1.0000
Jamaica	Pound sterling	Gold	4.8665
Japan	Yen	Gold	.9970
India	Rupee of 16 annas	Silver	.4584
Italy	Lira	Gold and silver	.1930
Liberia	Dollar	Gold	1.0000
Mexico	Dollar	Silver	1.0475
Netherlands	Florin	Silver	.4050
Norway	Crown	Gold	.2680
Paraguay	Peso	Gold	1.0000
Peru	Dollar	Silver	.9650
Porto Rico	Peso	Gold	.9258
Portugal	Milreis of 1,000 reis	Gold	1.0847
Russia	Roubles of 100 copecks	Silver	.7717
Sandwich Islands	Dollar	Gold	1.0000
Spain	Peseta of 100 centimes	Gold and silver	.1930
Sweden	Crown	Gold	.2680
Switzerland	Franc	Gold and silver	.1930
Tripoli	Mahbub of 20 piasters	Silver	.8709
Tunis	Piaster of 16 caroubs	Silver	.1250
Turkey	Piaster	Gold	.0439
United States of Colombia	Peso	Silver	.9650
Uruguay	Patacon	Gold	.9498
Venezuela	Peso	Silver	.7773

The above rates will be taken in estimating the values of all foreign merchandise made out in any of said currencies imported on or after January 1, 1874, but will not be applied to goods imported before that day.

I am, very respectfully,

WM. A. RICHARDSON,
Secretary.

22 *Agreed statement of facts, Ex. No. 2.*

Circular exhibiting the values, in United States money of account, of the pure gold or silver representing, respectively, the monetary units of foreign countries, and proclaiming the value of the standard coins in circulation of the various nations of the world, in compliance with the act of March 3, 1873.

[1873. Department No. 145. Mint Bureau, No. 6.]

TREASURY DEPARTMENT,
Washington, D. C., January 1, 1874.

The first section of the act of March 3, 1873, provides "that the value of foreign coin, as expressed in the money of account of the United

States, shall be that of the pure metal of such coin of standard value," and that "the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury." The following tables have been prepared and are published in compliance with the above-stated provisions of law:

TABLE A.—*Values, in United States money of account, of the pure gold or silver, representing the monetary units, respectively, of foreign countries.*

Country.	Monetary unit.	Standard.	Value in U. S. money of account.
Argentine Republic	Peso fuerte	Gold	$1.0000
Austria	Florin	Silver	.4760
Belgium	Franc	Gold and silver	.1930
Bolivia	Dollar	Silver	.9650
Brazil	Milreis of 1,000 reis	Gold	.5456
British Possessions in North America	Dollar	Gold	1.0000
Central America	Dollar	Silver	.9650
Chili	Peso	Gold	.9123
China	Cash	Copper	----------
Cuba	Peso	Gold	.9258
Denmark	Crown	Gold	.2680
Ecuador	Dollar	Silver	.9650
Egypt	Dollar of 20 piasters	Silver	1.0039
France	Franc	Gold and silver	.1930
Great Britain	Pound sterling	Gold	4.8665
Greece	Drachma	Silver	.1930
German Empire	Mark	Gold	.2382
Hayti	Dollar	Silver	1.0000
Jamaica	Pound sterling	Gold	4.8665
Japan	Yen	Gold	.9970
India	Rupee of 16 annas	Silver	.4584
Italy	Lira	Gold and silver	.1930
Liberia	Dollar	Gold	1.0000
Mexico	Dollar	Silver	1.0475
Netherlands	Florin	Silver	.4050
Norway	Crown	Gold	.2680
Paraguay	Peso	Gold	1.0000
Peru	Dollar	Silver	.9650
Porto Rico	Peso	Gold	.9258
Portugal	Milreis of 1,000 reis	Gold	1.0847
Russia	Roubles of 100 copecks	Silver	.7717
Sandwich Islands	Dollar	Gold	1.0000
Spain	Peseta of 100 centimes	Gold and silver	.1930
Sweden	Crown	Gold	.2680
Switzerland	Franc	Gold and silver	.1930
Tripoli	Mahbub of 20 piasters	Silver	.8709
Tunis	Piaster of 16 caroubs	Silver	.1250
Turkey	Piaster	Gold	.0439
United States of Colombia	Peso	Silver	.9650
Uruguay	Patacon	Gold	.9498
Venezuela	Peso	Silver	.7773

NOTE.—Where silver is the legal standard, and represents the unit of account, its value is reduced to the basis of gold, on the assumption that the ratio of 15½ to 1 represents the relative values of silver and gold.

23 TABLE B.—*Weight, fineness, and value of foreign coins, as determined by United States Mint assays.*

EXPLANATORY REMARKS.

1. The weight is expressed in fractions of an ounce troy, agreeing with the terms used in the United States mints.

If it is desired to have the weight of any piece in grains, regard the thousandths of an ounce as integers, take their half, from which deduct four per cent. of that half, and the remainder will be grains.

2. The fineness is expressed in thousandth parts, i. e., so many parts

of pure gold or silver in 1,000 parts of the coin. The old carat system is generally abandoned, (except for jewelry,) but it may be worth while to say that 41⅔ thousandths equal one carat.

3. The valuation of gold is a direct calculation from weight and fineness, at the legal rate of 25.8 grains, 900 fine, being equal to one dollar; or $20.672 (nearly) per ounce of fine gold.

Foreign coins, if converted into United States coins, will be subject to a charge of one-fifth of one per cent.

4. For the silver there is no fixed legal valuation as compared with gold. The value of the silver coins is computed at the rate of 120 cents per ounce, 900 fine, payable in subsidiary silver coin, that having been the mint-price when the assays were made.

The gold-value of silver is to be found in the bullion-markets; at present it is about 113 cents per ounce, 900 fine.

5. These tables generally give the one principal coin of each country, from which the other sizes are easily deduced. Thus, when the franc system is used, there are generally gold-pieces of 40, 20, 10, and 5 francs, all in due proportion. But in silver the fractional coins are very often of less intrinsic value than the normal coin, proportionally. These are seldom exported.

GOLD COINS.

Country.	Denomination.	Weight.	Fineness.	Value in U. S. gold coin.
		Ounces.	*Thousandths.*	*Dolls. cts. mills.*
Austria	Fourfold ducat	0.448	986	9 13 2
Do	Souverain, (no longer coined.)	0.363	900	6 75 4
Do	4 florins, (new)	0.104	900	1 93 5
Belgium	25 francs	0.254	899	4 72 0
Brazil	20 milreis	0.575	916,5	10 89 4
Central America	2 escudos	0.209	853,5	3 68 8
Do.	4 reals	0.027	875	0 48 8
Chili	10 pesos, (dollars)	0.492	898	9 13 6
Colombia and South America generally	Old doubloon*	0.867	870	15 50 3
Denmark	Old 10 thaler	0.427	895	7 90 0
Egypt	Bedidlik, (100 piasters)	0.275	875	4 97 4
England	Pound or sovereign, (new)†	0.256,8	916,5	4 86 5
Do.	Pound average, (worn)	0.256,3	916,5	4 85 6
France	20 franc, (no new issues)	0.207	899	3 84 7
Germany	Old 10 thaler, (Prussian)	0.427	903	7 97 1
Greece	20 drachms	0.185	900	3 44 2
India, (British)	Mohur, or 15 rupees‡	0.375	916,5	7 10 5
Italy	20 lire, (francs)	0.207	899	3 84 7
Japan	Cobang, (obsolete)	0.289	572	3 57 6
Do.	New 20 yen	1.072	900	19 94 4
Mexico	Old doubloon, (average)	0.867	870	15 59 3
Do.	20 pesos, (empire)	1.086	875	19 64 3
Do.	20 pesos, (republic,) new	1.081	873	19 51 5
Netherlands	10 guilders	0.215	899	3 99 7
New Granada	10 pesos, (dollars)	0.525	891,5	9 67 5
Peru	20 soles	1.055	898	19 21 3
Portugal	Coroa, (crown)	0.308	912	5 80 7
Russia	5 roubles	0.210	916	3 97 6
Spain	100 reales	0.268	896	4 96 4
Do.	80 reales	0.215	869,5	3 86 4
Do.	10 escudos	0.270,8	896	5 01 5
Sweden	Ducat	0.111	975	2 23 7
Do.	Carolin, (10 francs)	0.104	900	1 93 5
Tunis	25 piasters	0.161	900	2 99 5
Turkey	100 piasters	0.231	915	4 37 0

* The doubloon (doblon, or more properly onza, though not really an ounce Spanish) is now generally discontinued. These figures answer as well for the doubloon of Peru, Chili, Bolivia, &c., and therefore this item stands for all. Popayan pieces were rather inferior.

† The sovereigns coined at Melbourne and Sidney, in Australia, and distinguished only by the mint marks M. and S., are the same as those of the London mint. Sovereigns generally are up to the legal fineness, 916⅔, (or 22 carats.)

‡ The last coinage of mohurs was in 1862.

24 SILVER COINS.

Country.	Denomination.	Weight.	Fineness.	Value in subsidiary silver coin.
		Ounces.	*Thousandths.*	*Dolls. cts. mills.*
Austria	Old rix dollar	0. 902	833	1 00 2
Do	Old scudo, (crown)	0. 836	902	1 00 5
Do	Florin, before 1858	0. 451	833	0 50 1
Do	New florin	0. 397	900	0 47 6
Do	New union dollar	0. 596	900	0 71 5
Do	Maria Theresa dollar, 1780	0. 895	838	1 00 0
Belgium	5 francs	0. 803	897	0 96 0
Do	2 francs	0. 320	835	0 35 6
Bolivia	New dollar	0. 801	900	0 96 1
Brazil	Double milreis	0. 820	918, 5	1 00 4
Canada	20 cents	0. 150	925	0 18 5
Do	25 cents	0. 187, 5	925	0 23 1
Central America	Dollar	0. 866	850	0 98 1
Chili	Old dollar	0. 864	908	1 04 6
Do	New dollar	0. 801	900, 5	0 96 2
China	Dollar, (English mint)	0. 866	901	1 04 0
Do	10 cents	0. 087	901	0 10 5
Denmark	2 rigsdaler	0. 927	877	1 08 4
Egypt	Piaster, (new)	0. 040	755	0 04 0
England	Shilling, (new)	0. 182, 5	924, 5	0 22 5
Do	Shilling, (average)	0. 178	925	0 21 9
France	5 franc, (average)	0. 800	900	0 96 0
Do	2 franc	0 320	835	0 35 6
North German States	Thaler, (before 1857)	0. 712	750	0 71 2
Do	Thaler, (new)	0. 595	900	0 71 4
South German States	Florin	0. 340	900	0 40 8
German Empire	5 marks, (new)	0. 804	900	0 96 5
Greece	5 drachms	0. 719	900	0 86 3
Hindostan	Rupee	0. 374	916, 5	0 45 7
Italy	5 lire	0. 800	900	0 96 0
Do	Lira	0. 160	835	0 17 8
Japan	Itzebu, (no longer coined)	0. 279	890	0 33 1
Do	1 yen	0. 866, 7	900	1 04 0
Do	50 sen	0. 402	800	0 42 8
Mexico	Dollar, (average)	0. 866	901	1 04 0
Do	Peso of Maximilian	0. 861	902, 5	1 03 6
Netherlands	2½ guilders	0. 804	944	1 01 2
Norway	Specie daler	0. 927	877	1 08 4
New Grenada	Dollar of 1857	0. 803	896	0 96 0
Peru	Old dollar	0. 866	901	1 04 3
Do	Dollar of 1858	0. 766	909	0 92 8
Do	Half dollar of 1836-'38	0. 433	650	0 37 5
Do	Sol	0. 802	900	0 96 0
Portugal	500 reis	0 400	912	0 48 6
Romania	2 lei, (francs,) new	0. 322	835	0 35 8
Russia	Rouble	0. 667	875	0 77 8
Spain	5 pesetas, (dollar)	0. 800	900	0 96 0
Do	Peseta, (pistareen)	0. 160	835	0 17 8
Sweden	Ricksdaler	0. 273	750	0 27 3
Switzerland	2 francs	0. 320	835	0 35 6
Tunis	5 piasters	0. 511	898, 5	0 61 2
Turkey	20 piasters	0. 770	830	0 85 2

WM. A. RICHARDSON,
Secretary of the Treasury.

25 The foregoing comprises all the evidence adduced upon the trial, and thereupon defendant's counsel moved the court that judgment be entered for defendant, and plaintiffs' counsel moved that judgment be entered for plaintiffs.

After argument and due deliberation, the court denied the said motion of defendant, and defendant's counsel duly excepted thereto.

The court then directed that judgment be entered for the plaintiffs, and defendant's counsel duly excepted to said direction.

The decision of said court refusing judgment for defendant, and directing judgment for plaintiffs, and filed by the court upon the conclusion of said trial, is as follows:

26 SHIPMAN, *J.*:

This action was tried by the court, a jury having been waived by written stipulation of the parties. The following statement of facts was agreed to by the parties, and is found by the court to be true.

(Here follows the statement above printed.)

The act of May 22d, 1846, (9 Stats. at Large, p. 14,) provided "That in all computations at the custom-house, the foreign coins and money of account herein specified shall be estimated as follows, to wit, * * *" "the franc of France and of Belgium, and the lira of Sardinia, at eighteen cents six mills." * * *

The act of March 3d, 1873, (17 Stat. at Large, p. 602,) entitled "An act to establish the custom-house value of the sovereign or pound sterling of Great Britain, and to fix the par of exchange," is as follows:

27 "Be it enacted, &c.

"SECTION 1. That the value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value, and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and proclaimed on the first day of January by the Secretary of the Treasury.

"SEC. 2. That in all payments by or to the Treasury, whether made here or in foreign countries, when it becomes necessary to compute the value of the sovereign or pound sterling, it shall be deemed equal to four dollars eighty-six cents and six and one-half mills, and the same rule shall be applied in appraising merchandise imported, when the value is by the invoice in sovereigns or pounds sterling, and in the construction of contracts payable in sovereigns or pounds sterling; and this valuation shall be the par of exchange between Great Britain and the United States; and all contracts made after the first day of January, eighteen hundred and seventy-four, based on an assumed par of exchange with Great Britain, of fifty-four pence to the dollar, or four dollars forty-four and four-ninth' cents to the sovereign or pound sterling, shall be null and void.

"SEC. 3. That all acts and parts of acts inconsistent with these provisions be, and the same are hereby, repealed."

The sole question of law which I shall consider is, whether the effect of the first and third sections of the act of 1873 was to repeal the act of 1846, and to substitute in all computations at the custom-house for the valuation of foreign coins, which had been previously prescribed by statute, the valuation according to standard value, annually

28 estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury.

It is apparent, from an examination of the second section of the act of 1873, that the intention of Congress was to make a complete change for all commercial purposes in the valuation of the pound sterling. In addition to the provision "that in all payments by or to the Treasury, whether made here or in foreign countries," the value of the sovereign shall be deemed equal to 4.86.6½; it is also expressly declared that "the same rule shall be applied in appraising merchandise imported when the value is, by the invoice, in sovereigns or pounds sterling. Apt, appropriate, and definite language was here used to declare the radical change effected by the section and indicated by the title of the bill. The claim of the defendant is, that the same change is wrought, in regard to the value of all other foreign coins of the various nations of the world, by the general provision of the first section—"the value of foreign

coin as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value."

It was not denied upon the trial that the effect of this construction of the first section would be to materially increase the amount of duties imposed by the ad-valorem tariff, where the rate is upon a sliding scale in proportion to the value of the article. The duty is raised upon one class of articles eighteen per cent.; upon another class twenty-five per cent.; upon other classes a still higher percentage, and the aggregate result would be to increase the amount of duties annually millions of dollars. Such a change, in regard to the pound sterling, was unmistakably intended and made by the second section of the act in question. If the same purpose existed in regard to other coins, why was not the intent expressed in similar decisive terms? The entirely different phraseology of the two sections of the act suggests the conclusion that the object of each section was not the same.

29 In considering the question more closely, it is apparent that if the act of May 22d, 1846, and the other statutes which provides for the valuation of foreign coins in custom-house computations are repealed by the first and third sections of the act of March 3d, 1873, such repeal is by implication only.

The rule in regard to repeals by implication is laid down in U. S. vs. Tynen, (11 Wallace, p. 92,) as follows: "It is a familiar doctrine that repeals by implication are not favored. When there are two acts on the same subject, the rule is to give effect to both, if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first, and even where two acts are not in express terms repugnant, yet, if the latter covers the whole subject of the first, and embraces new provisions plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act." And in Henderson's Tobacco, (11 Wallace, 652,) Mr. Justice Strong, in re-asserting the rule, adds: "It must be observed that the doctrine asserts no more than that the former statute is repealed so far as the provisions of the subsequent statute are repugnant to it, or so far as the latter statute, making new provisions, is plainly intended as a substitute for it."

In order, then, to ascertain whether the act of 1873 is a repeal by implication of the previous acts, upon the subject of the valuation for custom-house purposes, of foreign coins other than the pound sterling, an examination of the legislation of Congress in regard to foreign coins becomes necessary. Such examination discloses the fact, that from the earliest history of the Government to a comparatively recent period, three classes of laws in regard to foreign coins have existed, each class having a distinct and separate object.

The first class embraces those laws which were passed to fix the
30 rate at which foreign denominations of money are to be computed in American money at the custom-house, for the purpose of ascertaining the dutiable value of imported merchandise. Congress commenced as early as 1789 the system ef collecting a revenue by means of duties upon imported goods, the duties to be computed upon the values of the goods in currency of the United States. Foreign invoices stated the values in the currency of the respective countries from which the goods were imported, and it of course became necessary to transmute these values thus stated into the currency of this country. Hence the 18th section of the act of July 31st, 1789, which was an act to regulate the collection of duties upon imported goods, provided "that all foreign coins and currencies shall be estimated according to the following rates;

each pound sterling of Great Britain at four dollars forty-four cents; each livre tournois of France at eighteen cents and a half." * * * Similar legislation was had in the acts of Aug. 4th, 1790, of March 2d, 1799, and in various years thereafter, including the act of May 22d, 1846, until the second section of the act of March 3d, 1873, which as has been said, specifically provides that the valuation therein given to the sovereign shall be applied to the valuations stated in the invoices at the custom-house. The statutes of this class are those of July 31st, 1789, § 18, 1 Stat. at Large, p. 41; August 4th, 1790, § 40, 1 Stat. at Large, p. 167; March 2, 1799, § 61, 1 Stat. at Large, p. 673; March 3d, 1801, §§ 1, 2, 2 Stats. at Large, p. 121; July 27th, 1842, §§ 1, 2, 5 Stats. at Large, p. 496; March 3d, 1843, 5 Stat. at Large, p. 625; May 22d, 1846, 9 Stat. at Large, p. 14; March 2d, 1861, 12 Stat. at Large, p. 207; March 3d, 1873, § 2, 17 Stat. at Large, p. 602. Each of the various acts in this class either referred in direct terms to the valuation of foreign coins for custom-house purposes, or are parts of general statutes imposing
31 duties upon foreign goods, and obviously relate exclusively to the appraisal of merchandise when the value is by the invoice in foreign coin. For example, the act of July 27th, 1842, (5 Stats. at Large, p. 496,) provides that in all payment by or to the Treasury, when it becomes necessary to compute the value of the pound sterling, it shall be deemed equal to $4.84, "and the same rule shall be applied to appraising merchandise imported when the value is by the invoice in pounds sterling." The language used in other statutes is of the following kind: "In all computations of the value of foreign moneys of accounts at the custom-house of the U. S.:" "in the computation of duties:" "in computation at the custom-house." Congress thus adopted an exact, well-defined, and uniform system for the ascertainment at the custom-house of the dutiable value of foreign goods, which system, as will be seen, has always materially differed from the system of valuation placed upon foreign coins for the payment of debts.

In the infancy of the Government, and until recently, foreign coin was in common circulation in this country. The duties under the revenue acts were payable in gold and silver coin, and hence it became necessary to establish the rates at which coin of other countries should be received in payment of debts to the Government, and also as legal tender in payment of debts to individuals. Statutes establishing these rates constitute the second class of legislation on the subject of foreign coinage. Thus the 30th section of the act of July 31st, 1789, the same act from which I have heretofore cited, provided that "the duties and fees to be collected by virtue of this act shall be received in gold and silver coin only, at the following rates, that is to say, the gold coins of France, England, Spain, and Portugal, and all other gold of equal fineness, at eighty-nine cents for every pennyweight." The 18th section had provided that all foreign coins and currencies shall be estimated
32 (for custom-house computations) according to a different rate. This section prescribed the rate at which coin shall be received in payment of duties the amount of which was ascertained by the aid of the 18th section. So the act of February 9th, 1793, (1 Stats. at Large, p. 300,) provided the rates at which foreign coins should be received as legal tender "for the payment of all debts and demands;" and a series of statutes of the same character was passed, from time to time, until the act of February 21, 1857, (11 Stats. at Large, p. 163.) But it was never supposed that this class of acts, passed for the purpose of establishing the value of foreign coin, when used in payment to the Government or between individuals, had any relation to the first mentioned

class. The second series was enacted for a different object and purpose For example, when Congress provided, by act of March 3d, 1843, (5 Stats. at Large, p. 607,) that the gold coins of Great Britain should be receivable by weight for the payment of all debts and demands at prescribed rates, such act evidently did not repeal the law of the previous year, by which the pound sterling was estimated for custom-house purposes.

The second series of statutes existed until the act of Feb. 21st, 1857, (11 Stats. at Large, p. 163,) the third section of which act repealed "all former acts authorizing the currency of foreign gold or silver coins, and declaring the same a legal tender in payment for debts." The same section also provided that "it shall be the duty of the Director of the Mint to cause assays to be made from time to time of such foreign coins as may be known to our commerce, to determine their average weight, fineness, and value, and to embrace in his annual report a statement of the results thereof." This provision was in continuation of the third series of laws which had been passed on the subject of foreign coinage, whereby the mint was made the instrument for estimating the value of foreign coins.

33 Perhaps the germ of this class of legislation may be found in the last clause of the act of Feb. 9th, 1793, (1 Stat. at Large, p. 300)—the act which established the rates at which foreign coins should be received as legal tender, and which clause provided that "no foreign coin, that may have been or shall be issued subsequent to the 1st day of January, 1792, shall be a tender as aforesaid until samples thereof shall have been found by assay, at the mint of the U. S., to be conformable to the respective standards required, and proclamation thereof shall have been made by the President of the United States." This provision simply had reference to the rate at which coins—the value of which was then unknown to Congress—should be received in payment of debts; but Congress thereafter provided, in the act of April 10th, 1806, (2 Stat. at Large, p. 374,) as follows: "And it shall be the duty of the Secretary of the Treasury to cause assays of the foreign gold and silver coins made current by this act to be had at the mint of the United States at least once in every year, and to make report of the result thereof to Congress, for the purpose of enabling them to make such alterations in this act as may become requisite from the real standard value of such foreign coins. And it shall be the duty of the Secretary of the Treasury to cause assays of the foreign gold and silver coins of the description made current by this act, which shall issue subsequently to the passage of this act, and shall circulate in the United States, at the mint aforesaid, at least once in every year, and to make report of the result thereof to Congress, for the purpose of enabling Congress to make such coins current, if they shall deem the same to be proper, at their real standard value."

With the clauses of the act of 1806, just quoted, the third class of legislation in regard to coinage definitely commenced. This provision, passed for the purpose of furnishing information to Congress, by

34 the aid of which proper alterations might be made in existing rates at which coins shall be received in payment of debts, continued until the act of Feb. 21st, 1857, supplemented by similar acts of April 29, 1816, June 25th, 1834, and March 3, 1843. The act of February 21st, 1857, repealed all acts relating to the use of foreign coin as a legal tender, but continued the requirement upon the Director of the Mint to cause assays of foreign coins, to determine their average weight, fineness, and value, and to report annually to Congress the result of

such assays. The object of this provision was not to ascertain the rates at which foreign coin should pass current in the country, for the use of foreign coin as currency ceased upon the passage of this statute, but it was obviously for the purpose of furnishing official information to Congress and to the various Departments of Government, so that their payments in foreign coin could be regulated, and to the public, so that courts and individuals should have accurate knowledge of the rate at which foreign coin should properly be estimated in our own currency. These provisions of the acts of 1806 and of 1857, continued until the act of March 3d, 1873, were annually complied with by the Director of the Mint, and, with the first class of laws, constituted, after 1857, the only two existing series of statutes on the subject of foreign coin.

The question now is, whether the first section of the act of 1873 is a repeal of the first class of laws, and of the entire system of valuation of foreign coins for custom-house purposes, or is the establishment of a new principle for the valuation of foreign coins for other purposes, and an instruction to the Director of the Mint to make such new estimate in addition to, or in alteration of, the system of assays which had previously been the means of information which Congress and the public possessed in regard to the value of foreign coins.

35 I cannot think that Congress intended in the first clause of the section to repeal the exact and uniform system of custom-house valuations which had existed since the year 1798, and to substitute therefor an entirely new system, by which the valuation of foreign coins was to be annually estimated and annually proclaimed. If Congress had intended such a change, it seems to me that they would have used apt and appropriate language, by which their intent would have been rendered obvious. Such language was within the reach of the draughtsmen, and it was used in the second section. It is true that the language of the section in question is positive and broad, "That the value of foreign coin as expressd in the money-account of the United States, shall be that of the pure metal of such coin of standard value," but from the history of the legislation in regard to the subject of foreign coins, the intent and object of the laws seems to me to have been a modification of the third series of laws rather than of the first. Theretofore, the sole method of estimating values had been by assay of the coins in circulation; the Director of the Mint annually ascertained the average weight and fineness of the actual coin, and communicated the result to Congress. The valuation which these results placed upon foreign coins was the valuation known to the public, recognized by individuals and by the Departments of the Government, "of the valuation of foreign coin, as expressed in the money-account of the United States," was prior to the act of 1873, the average value of such coin in circulation as determined by annual assays. Congress now establishes a new rule by which the Director of the Mint is to be guided, and declares that the valuation which the Government deems to be based upon a correct principle is the valuation of the ideal rather than the actual coin, and that thereafter the value shall be deemed

36 that of the pure metal of such coins of standard value; and in order that Congress and the public shall have the knowledge of the valuations thus placed upon foreign coins, that the Director of the Mint shall annually estimate, and the Secretary of the Treasury annually proclaim, the result of the estimate.

The former plan was to ascertain values by assays of the coin in use. That valuation was the official valuation furnished to Congress and the public. A new method and system of valuation is now prescribed to be made by the Director of the Mint, to wit, that the value of foreign coin

expressed in money of account of the United States shall be that of the pure metal of such coin, and that the new rule shall be annually reduced to practice, and its results communicated by the Secretary of the Treasury for the benefit of the public. It may well be that Congress intended to impose upon the various Departments the duty of making payments and of regulating their accounts with officers of the Government abroad in accordance with the new rule. This official valuation annually proclaimed may be the one by which courts should estimate the value of coins mentioned in contracts which are the subject of litigation. I do not think that it was intended to be the standard of values in a department of business for which a special series of acts has always made provision, and in which a special system of valuation has always existed different from the valuation imposed upon foreign coins when used as a legal tender. The intent to repeal that series of acts does not plainly appear.

It may be claimed that the first section of the act under consideration is analogous to the provision contained in the 61st section of the act of March 2d, 1799, "Provided, That it shall be lawful for the President
37 of the United States to cause to be established fit and proper regulations for estimating the duties on goods, wares, and merchandize imported into the United States in respect to which the original cost shall be exhibited in a depreciated currency, issued and circulated under the authority of any foreign government." It is to be observed that the proviso of the act of 1799 had reference exclusively to the manner in which a confessedly depreciated currency issued under authority of any foreign government should be estimated, and was limited to such exceptional case. But, not to dwell upon this suggestion, the object of this proviso was upon its face avowedly for the purpose of "estimating the duties on goods imported into the United States." The question here is whether the 1st section had any such object in view; whether the object was not totally different. Because the act of 1799 specifically conferred upon the President the duty of establishing regulations for estimating the duties on goods in respect to which the cost shall be exhibited in a depreciated currency, it does not follow that the act of 1873 conferred upon the Secretary of the Treasury power to proclaim annually the value at which all goods shall be estimated when such power has not been conferred in terms.

My conclusion is, that the first section of the act of March 3d, 1873, and the act of May 22d, 1846, do not cover or embrace the same subject, and that the former section was not intended as a substitute for the act of 1846, and kindred statutes, but was intended for other and different purposes than those which are specified in the class of statutes of which the act of 1846 is a part. I am, therefore, of opinion that the act of May 22d, 1846, is not repealed, and consequently, in determining the dutiable value of the several importations mentioned in the agreed statement of facts, the franc should have been estimated at $18\frac{6}{10}$ cents.

38 Let judgment be entered for the plaintiffs in the sum of $\$472\frac{97}{100}$, with interest and costs.

N. SHIPMAN, *Judge.*

Filed July 20, 1874.

I, Kenneth G. White, clerk of the circuit court of the United States for the southern district of New York, do hereby certify that the foregoing is a true and correct copy of the original opinion of the court, on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 4th day of August, A. D. 1874.

KENNETH G. WHITE, *Clerk.*

And inasmuch as the aforesaid several matters of fact and of law do not appear by the record of said trial and verdict, therefore, on the prayer of the said defendant, by his counsel, the said judge has signed and sealed this bill of exceptions this 12th day of September, 1874, at the April term of said circuit court as aforesaid.

N. SHIPMAN, *Judge.* [L. S.]

(Endorsed:) U. S. circuit court. Auguste Richard and others agst. Chester A. Arthur. Bill of exceptions filed Sept. 15, 1874.

39 Supreme Court of the United States.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR,
against
AUGUSTE RICHARD AND WILLIAM E. ISELIN,
defendants in error.

Of October term in the year of our Lord one thousand eight hundred and seventy-four.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol in the City of Washington, comes the said Chester A. Arthur, by George Bliss, his attorney, and says that, in the record and proceedings aforesaid, there is manifest error in this, to wit: that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the said defendants against the said plaintiff;
40 whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendants. And the said plaintiff prays that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid, as the same appear more fully therein, may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to those things which he has lost by reason of the said judgment.

GEORGE BLISS,
U. S. Attorney for Plaintiff in Error.

(Endorsed:) Supreme Court of the U. S. Chester A. Arthur, plaintiff in error, agst. Auguste Richard & William E. Iselin. Assign-
41 ment of error. Filed Sept. 23, 1874.

I hereby certify that on the 22d day of September, 1874, at the city of New York, at No. 29 Nassau street, in my district, I personally served the within assignment of error upon the within-named Webster & Craig, attorneys for defendants in error, by then and there leaving with Sidney Webster, one of said firm, a true copy thereof.

Dated September 22d, 1874.

OLIVER FISKE,
U. S. Marshal S. D. N. Y.

W. J. F.

42 I hereby certify that on the 22d day of September, 1874, at the

city of New York, at No. 29 Nassau street, in my district, I personally served the within citation upon the within-named Webster & Craig, attorneys for defendants in error, by then and there exhibiting to Sidney Webster, esq., one of said firm, the within original, and at the same time leaving with him a copy thereof.

Dated September 22d, 1874.

OLIVER FISKE,
U. S. Marshal S. D. N. Y.

W. J. F.

UNITED STATES OF AMERICA, *ss:*

To Auguste Richard & William E. Iselin, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, 1874, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at the southern district of New York this eighteenth day of September, one thousand eight hundred & seventy-four.

SAML. BLATCHFORD.

43 Due and timely service of the within citation is hereby admitted for Auguste Richard & Wm. E. Iselin, defts. in error. Left copy Webster & Craig's office September 19, '74.

J. BROWN.

(Indorsed:) U. S. Supreme Court. Chester A. Arthur v. Auguste Richard & William E. Iselin. Citation. E. & A., No. 2, p. 289. Filed Sept. 23, 1874.

(Indorsement on cover:) No. 549. Chester A. Arthur, collector of the port of New York, plaintiff in error, vs. Auguste Richard and William E. Iselin. S. New York, C. C. U. S. Filed 6th October, 1874.

In the Supreme Court of the United States.

OCTOBER TERM, 1874.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,
vs.
AUGUSTE RICHARD AND WILLIAM E. ISELIN.
No. 549.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Brief for the Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1874.

CHESTER A. ARTHUR, Collector of the Port of New York, plaintiff in error,
vs.
AUGUSTE RICHARD AND WILLIAM E. ISELIN.
} No. 549.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Brief for the Plaintiff in Error.

STATEMENT.

This was an action of assumpsit, brought by the defendants in error against the plaintiff in error, to recover the sum of $472.97, alleged to have been illegally exacted by the latter as duty on certain merchandise imported by the former at the port of New York in March and April, 1874.

The suit was originally commenced in the superior court of the city of New York in May, 1874, but was afterward removed thence by certiorari into the circuit court of the United States for the southern district of New York, where, after a trial by the court on an agreed statement of facts (trial by jury having been waived by stipulation of the parties in writing,) judgment was rendered in favor of the plaintiffs, now the defendants in

error. Thereupon the case was brought to this court by writ of error.

From the agreed statement of facts, it appears that on the 16th of March and 7th of April, 1874, the plaintiffs below entered at the custom-house certain goods imported from France, the value of which was invoiced in francs of the currency of France. By the act of May 22, 1846, (9 Stat., 14,) it was provided that in all computations at the custom-house the franc of France should be estimated at 18 cents 6 mills. And computing the franc at $18\frac{6}{10}$ cents, the amount of duty that was leviable on the said goods was $1,853.35.

But long before the importation of the goods, to wit, on the 3d of March, 1873, Congress had passed an act, the 1st section of which provided that the value of foreign coin, as expressed in the money of account of the United States, should be that of the pure metal of such coin of standard value, and required the Director of the Mint annually to estimate the values of the standard coins in circulation, of the various nations of the world, and also made it the duty of the Secretary of the Treasury to proclaim the same on the first day of January. Prior to the 1st of January, 1874, the Director of the Mint, in compliance with this law, estimated and prepared two tables, one exhibiting the "values, in United States money of account, of the pure gold or silver, representing monetary units, respectively, of foreign countries," and the other exhibiting the "weight, fineness, and value of foreign coins, as determined by United States Mint assays," (see Tables A and B, printed Record, pp. 9 to 11;) and on the 1st of January, 1874, the Secretary of the Treasury proclaimed the said tables, pursuant to the requirements of the said act of March 3, 1873. (See "Ex. No. 2," printed Record, pp. 8 to 11.)

On the 20th of December, 1873, the Secretary of the Treasury issued to the collectors of customs, including the defendant below, a circular letter of instructions, embodying Table A referred to above, and directing that the list therein contained, of standard values of foreign currencies in the money of account of the United States, be used in the computation of customs-duties from and

after January 1, 1874. (See "Ex. No. 1," printed Record, pp. 7 and 8.) In that list the value of the French franc was put down at 19 cents 3 mills; and computing the franc at this value, the amount of duty leviable on the said goods was $2,326.32.

The defendant below, acting under the instructions of the Secretary of the Treasury, as given in the said circular-letter, computed the franc at $19\frac{3}{10}$ cents in determining the dutiable value of the goods mentioned, and accordingly the amount last stated was assessed and collected by him as duty thereon. The sum in controversy is the difference between that amount ($2,326.32) and the amount hereinbefore stated, ($1,853.35.)

On the evidence adduced (see printed Record, pp. 5 to 11) defendant below moved that judgment be entered in his favor, but the court denied the motion, and directed judgment to be entered for the plaintiffs.

ASSIGNMENT OF ERRORS.

The court erred in ruling that the value of the franc must still be estimated under the act of 1846.

ARGUMENT.

I.

This case turns upon the single question, whether the provision of the act of May 22, 1846, cited above, requiring the franc of France to be estimated at 18 cents 6 mills in computations at the custom-house, was in force at the date of the importations referred to, and furnished the rule by which the dutiable value of those importations was to be determined.

We contend that that provision was not then in force.

In support of this view we submit, in the first place, that the act of May 22, 1846, was repealed by the aforesaid act of March 3, 1873, which reads as follows:

"*Be it enacted, &c.*, That the value of foreign coin, as expressed in the money of account of the United States,

shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation, of the various nations of the world, shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury.

"Sec. 2. That in all payments by or to the Treasury, whether made here or in foreign countries, where it becomes necessary to compute the value of the sovereign or pound sterling, it shall be deemed equal to four dollars eighty-six cents and six and one-half mills, and the same rule shall be applied in appraising merchandise imported, where the value is, by the invoice, in sovereigns or pounds sterling, and in the construction of contracts payable in sovereigns or pounds sterling, and this valuation shall be the par of exchange between Great Britain and the United States; and all contracts made after the first day of January, 1874, based on an assumed par of exchange with Great Britain, of fifty-four pence to the dollar, or four dollars forty-four and four-ninths cents to the sovereign or pound sterling, shall be null and void.

"Sec. 3. That all acts and parts of acts inconsistent with these provisions be, and the same are hereby, repealed."

The first and third sections of this statute are relied upon as working a repeal of the act of 1846.

II.

To get at the true meaning and effect of the act of 1873, it is important to keep in mind what the pre-existing law was relative to the value (in our money) of foreign coin; for it was manifestly the design of Congress by that act to alter or modify the same.

Looking at the previous legislation, we find that the various statutory provisions relating to foreign coin or currencies are divisible into three or more distinct classes, each class having a different object in view.

First. There is a class of provisions enacted from time to time, prescribing the rates at which foreign coins

should be estimated in computations at the custom-house. These provisions are contained in the following acts:

Act of July 31, 1789, sec. 18, (1 Stat., 41.)
Aug. 4, 1790, sec. 40, (*ibid.*, 167.)
Mar. 2, 1799, sec. 61, (*ibid.*, 673.)
Mar. 3, 1801, sec. 1, (2 Stat., 121.)
July 27, 1842, sec. 1, (5 Stat., 496.)
Mar. 3, 1843, (*ibid.*, 625.)
May 22, 1846, (9 Stat.. 14.)
Mar. 2, 1861, (12 Stat., 1861.) 207

The provisions in the first three acts just cited, namely, sec. 18 of the act of 1789, sec. 40 of act of 1790, and sec. 61 of the act of 1799, prescribe rates for estimating the value of particular foreign coins enumerated therein, and they also prescribe a mode for estimating the value of such foreign coins as are not enumerated therein. This mode required all denominations of foreign money not therein enumerated to be estimated in value as nearly as might be to the rates therein prescribed for the enumerated coins, *or* according to the intrinsic value of such foreign money compared with money of the United States. The provisions in the other acts cited prescribe rates for estimating the value of *particular foreign coins only.* It is proper to remark that in one of these other acts (act of July 27, 1842, sec. 1) the provision fixes the rate for estimating the value of a particular coin (to pound sterling) in payments by or to the Treasury, as well as computations at the custom-house. Thus, down to the passage of the act of 1873, the condition of the law in regard to estimating the value of foreign coins in computations at the custom-house, was this: Certain coins designated in the statute were to be estimated according to rates specifically prescribed; but coins not designated therein were to be estimated as nearly as might be to those rates, or according to the intrinsic value of such coins as compared with our money. Furthermore, by a proviso in section 61, of the act of March 2, 1799, cited above, the President was authorized "to cause to be established fit and proper regulations for estimating the duties on goods, wares, and merchan

dise imported into the United States, in respect to which the original cost shall be exhibited in a depreciated currency, issued and circulated under authority of any foreign government."

Secondly. There is a class of provisions that permitted the payment of duties and fees at the custom-house in certain foreign coins, at rates specifically set forth therein. These are found in the following acts:

Act of July 31, 1789, sec. 30, (1 Stat., 44.)
Aug. 4, 1790, " 56, (*ibid.*, 173.)
Mar. 21, 1799, " 74, (*ibid.*, 680.)

By a proviso in the section of the act last cited it is declared "that no foreign coins shall be receivable which are not by law a tender for the payment of all debts, except in consequence of a proclamation of the President of the United States authorizing such foreign coins to be received in payment of the duties and fees aforesaid."

Thirdly. There is a class regulating the value of certain denominations of foreign coins, with a view to their use as currency, and making them a legal tender, at the rates prescribed, for the payment of all debts and demands. This class would seem to include, within its general scope, the payment of duties and fees at the custom-house, and thus apply to the same subject as that to which the second class is applicable. The provisions of this class are contained in the following acts:

Act of Feb. 9, 1793, sec. 1 and 2, (1 Stat., 300.)
Feb. 1, 1798, (*ibid.*, 539.)
April 30, 1802, (2 Stat., 173.)
April 10, 1806, (*ibid.*, 374.)
April 29, 1816, sec. 1, 3 Stat., 322.)
Mar. 3, 1819, (*ibid.*, 525.)
Mar. 3, 1821, (*ibid.*, 645.)
Mar. 3, 1823, (*ibid.*, 777.)
June 25, 1834, sec. 1, (4 Stat., 681.)
June 28, 1834, sec. 1, (*ibid.*, 700.)
Mar. 3, 1843, sec. 1 and 2, (5 Stat., 607.)
Feb. 21, 1857, sec. 1, (11 Stat., 163.)

Section 1 of the last-mentioned act regulated the value at which certain coins, known as the quarter, eighth, and sixteenth of the Spanish milled dollar, and of the Mexican dollar, should be received at the Treasury, the post-offices, and the land-offices of the United States. But, by the 3d section of the same act, "all former acts authorizing the currency of foreign gold or silver coins, and declaring the same a legal tender in payment for debts," were repealed.

Fourthly. There is a class of provisions which were enacted with a view *to obtain information for Congress* in regard to the intrinsic value of the coins made current by the provisions embraced in the third class above. These provisions are found in the following acts:

Act of April 10, 1806, sec. 1, (2 Stat., 374.)
April 29, 1816, sec. 2, (3 Stat., 322.)
June 25, 1834, sec. 2, (4 Stat., 681.)
March 3, 1843, sec. 3, (5 Stat., 607.)
Feb. 21, 1857, secs. 3 and 7, (11 Stat., 163-'4.)

The first of these provisions, (see section 1, act of April 10, 1806,) is in the following language: "And it shall be the duty of the Secretary of the Treasury to cause assays of the foreign gold and silver coins made current by this act to be had at the Mint of the United States at least once in every year, and to make report of the result thereof to Congress, for the purpose of enabling them to make such alterations in this act as may become requisite from the real standard value of such foreign coins. And it shall be the duty of the Secretary of the Treasury to cause assays of the foreign gold and silver coins of the description made current by this act, which shall issue subsequently to the passage of this act, and shall circulate in the United States, at the Mint aforesaid, at least once in every year, and to make report of the result thereof to Congress, for the purpose of enabling Congress to make such coins current, if they shall deem the same to be proper, at their standard value."

The next (see section 2, act of April 29, 1816) is in these words: "That it shall be the duty of the Secretary of the Treasury to cause assays of the foregoing gold and silver coins, made current by this act, to be had at

the Mint of the United States at least once in every year, and to make report of the result thereof to Congress."

The next two (see section 2, act of June 25, 1834, and section 3, act of Mar. 3, 1843) are similar to that last quoted.

The remaining provision (see act of Feb. 21, 1857) is as follows: By section 3 it is made "the duty of the Director of the Mint to cause assays to be made, from time to time, of such foreign coins as may be known to our commerce, to determine their average weight, fineness, and value, and to embrace in his annual report a statement of the results thereof;" and by section 7 it is provided that thereafter "the Director of the Mint shall make his annual report to the Secretary of the Treasury up to the 30th of June in each year, so that the same may appear in his annual report to Congress on the finances."

All of these provisions contemplate the same object, namely, the obtaining of information relative to the actual value of the coins referred to therein respectively. They do not of themselves have any regulative force or effect upon the value of such coins, either in transactions between individuals or with the Government.

III.

From the foregoing, it will be seen that by the third section of the act of February 21, 1857, (11 Stat., 163,) in conjunction with the proviso in the seventy-fourth section of the act of March 2, 1799, (1 Stat., 680,) all the statutory provisions comprised in the *second* and *third* classes above enumerated, in force at the time of the passage of the former act, were swept away; and that the only provision in either of those classes that remained in force thereafter was the one contained in the first section of the said act of February 21, 1857. This section merely prescribed the rates at which certain fractional coins of the Spanish milled dollar and of the Mexican dollar should be thenceforth receivable at the Treasury, the post-offices, and the land-offices.

With the exception, then, of the section just referred to, the law relating to foreign coins, as it existed immediately before the adoption of the law of March 3, 1873, provided for but two things: one was how the value of foreign coins should be estimated in computations at the custom-house; the other was a means to obtain accurate information for Congress, from year to year, of the actual value of such foreign coins as were known to our commerce. In regard to the former of these objects, as has been already observed, the law at that time prescribed, first, that certain designated coins should be estimated in those computations according to rates specifically set forth in the statute; second, that coins not designated in the law should be estimated as nearly as might be to those rates, *or* according to their intrinsic value as compared with our money.

Such being the state of the law on the subject of foreign coins at the period when the act of March 3, 1873, was passed by Congress, the inquiry now is, what were the design and effect of that act.

IV.

That Congress, by the first section of the act of 1873, designed to make a *new* provision (to take the place of others *previously existing*) for determining the value of foreign coin when it should become necessary to express such value in the money of account of the United States, is very clear. The care which is taken in the third section to repeal "all acts and parts of acts" inconsistent with the provisions of the statute, indicates this. There was but one act with which the second section could conflict, namely the act of July 27, 1842, already cited. The first section of that act had provided, "that in all payments by or to the Treasury, whether made here or in foreign countries, where it becomes necessary to compute the value of the pound sterling, it shall be deemed equal to *four dollars and eighty-four cents*, and the same rule shall be applied in appraising merchandise imported where the value is by the invoice in pounds sterling." The second section of the act of 1873 provides "that

in all payments by or to the Treasury, whether made here or in foreign countries, when it becomes necessary to compute the value of the sovereign or pound sterling, it shall be deemed equal to *four dollars eighty-six cents and six and one-half mills*, and the same rule shall be applied in appraising merchandise imported, when the value is by the invoice in sovereigns or pounds sterling." The remainder of the section relates to subjects never before legislated upon by Congress, and of course there could be nothing in the previous laws inconsistent therewith. Had the act of 1842 been the only act which was intended to be repealed by the act of 1873, is it likely that Congress would have employed for that purpose the language used in the third section of the latter act? Is it not apparent from this language, "all acts and parts of acts," that the repeal of other acts relating to the subject of foreign coins, besides the one above mentioned, was contemplated? Now the only other acts then in force, relating to that subject, were such as are included in the *first* and *fourth* classes above-mentioned. Hence Congress must have intended to repeal, in addition to the act of 1842, statutory provisions then subsisting, found only in those two classes, and *that* by the introduction of the new provision contained in the first section of the act of 1873.

Recurring to the first clause of that section, we find that it declares, "That the value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value." This is a provision of the most comprehensive character. By the second section of the act of March 3, 1801, (2 Stat., 121; and see also section 2838 of the Revised Statutes,) the invoices of imported goods, subject to a duty *ad valorem*, were required to be made out in the currency of the place or country from whence the importation was made. To determine the *dutiable* value of such goods, it became necessary to ascertain the value of the currency in which they were invoiced as expressed in the money of account of the United States. Thus it is obvious that the provision above quoted was, by its terms, susceptible of being applied to cases of this kind;

and what is more, these are the only cases, that were previously under statutory regulation, to which the provision could apply. There was but one case of a different kind regulated by the previous law, namely, the case of payments by or to the Treasury, whether made here or abroad, when it became necessary to compute the value of the pound sterling, as mentioned in the act of July 27, 1842. This, however, is specifically provided for by the second section of the act of 1873.

Take, now, the next and last clause of the same section, which is in these words: "and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury." Is this provision, considered by itself, inconsistent with any other in force previous to the adoption of the act of 1873? It manifestly does not conflict with any of those hereinbefore enumerated in class *four*. Thus the last provision of this class (see sections 3 and 7 of the act of Feb. 21, 1857) declares that "it shall be the duty of the Director of the Mint to cause assays to be made, from time to time, of such foreign coins as may be known to our commerce, to determine their average weight, fineness, and value, and to embrace in his annual report a statement of the results thereof," and then requires that officer (sec. 7) to make his annual report to the Secretary of the Treasury by a certain time, so that it may appear in his (the Secretary's) annual report to Congress on the finances. The former provision makes it the duty of the Director of the Mint *to annually* ESTIMATE "THE VALUES *of the standard coins in circulation* of the various nations of the world," and of the Secretary of the Treasury *to proclaim these values annually to the public at large.* The latter provision makes it the duty of the Director of the Mint "*to* CAUSE ASSAYS TO BE MADE, *from time to time*, of such foreign coins as *may be known to our commerce*, &c., and annually report the results to the Secretary of the Treasury, who is required *to annually report the same to Congress.* It is plain that the duties devolved upon both the Director of the Mint and the Secretary of

the Treasury are wholly different in one of these provisions from what they are in the other. So that, as far as the act of 1873 is concerned, the provision in the act of 1857, referred to, may be still in operation; and this is equally true of the other provisions in the *fourth* class.

Thus it appears that if the provision in the *first* section of the act of 1873 was designed (and it is very manifest that it was so designed) to take the place of any other provisions previously in force, these provisions must be such as belonged to the *first* class—that is to say, provisions regulating the value of foreign coins for purposes of computation at the custom-house; there being, as we have seen, no provisions then in force, beside those embraced in that class, which were inconsistent with that section.

V.

The end sought to be accomplished by the act of March 3, 1873, was to modify or change the laws previously in force in relation to estimating the value of foreign coin; and the provisions just referred to supply the only matter of this sort found in those laws upon which that act could operate. These provisions, as has been already observed, gave a specific value to the various coins enumerated therein, which embraced the principal foreign coins known to our commerce, and also prescribed how the value should be estimated of all foreign money not therein enumerated. The inquiry now presents itself, whether the act of 1873 was intended to have a *general* application, and thus include both the enumerated and the non-enumerated coins in the former law; or whether it was designed to be limited in its application to coins of one of those classes only.

That statute declares, in the first section, "that the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value." This is certainly broad enough to comprehend all foreign coins, as well those enumerated as those not enumerated in the pre-existing laws; and, taken in connection with the clause

immediately following in the same section, there would seem to be no room for doubt that it was meant to have a corresponding effect. That clause reads: "And the values of the standard coins in circulation, of the *various nations of the world*, shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury." Here all foreign standard coins in circulation are obviously contemplated; and it is plain that their values are to be estimated upon the basis prescribed by the provision of the statute quoted above—that is to say, according to the value of the "pure metal of such coin of standard value." Hence this provision must be deemed to be applicable to all standard foreign coins in circulation, and, as a necessary result, to supersede entirely the provisions of the previous laws above adverted to.

The first clause of the first section of the act of 1873 is to be understood as furnishing the general rule by which the value of foreign coin, when expressed in the money of account of the United States, is to be estimated, in computations at the custom-house as well as elsewhere.

The next clause makes provision for officially estimating and making known to the public the value of such coin, according to that rule. This clause was clearly intended to supplement the other, and provide a mode for giving it effect practically.

From the operation of the general rule prescribed by the first section, the sovereign or pound sterling of Great Britain is excepted; as the second section of the act contains a special provision for computing the value thereof.

VI.

As confirmatory of the correctness of the foregoing views, we may also adduce the following circumstances:

In the *original draft* of the commissioners appointed "to revise, simplify, arrange, and consolidate all statutes of the United States, general and permanent in their nature, which shall be in force at the time such commissioners may make the final report of their doings," which

was prepared and printed in 1872, a section (numbered 410) was inserted under the title of "collection of duties upon imports," setting forth the rates at which foreign coins and currencies should be estimated in the appraisal of merchandise. These rates were taken from the provisions in the acts of March 2, 1799, March 3, 1801, July 27, 1842, March 3, 1843, May 22, 1846, and March 2, 1861, cited above under the *first* class. They are given below.

Those taken from the act of March 2, 1799, were:

Each pagoda of India at one dollar and ninety-four cents.

Each florin or guilder of the United Netherlands, at forty cents.

Each livre tournois of France, at eighteen and a half cents.

Each rial of plate of Spain, at ten cents.

Each rial of vellon of Spain, at five cents.

Each tale of China, at one dollar and forty-eight cents.

That taken from the act of March 3, 1801, was:

Each star pagoda of Madras, at one dollar and eighty-four cents.

That taken from the act of July 27, 1842, was:

Each pound sterling of Great Britain, at four dollars and eighty-four cents.

Those taken from the act of March 3, 1843, were:

Each rupee of British India, at forty-four and one-half cents.

Each thaler of Bremen, of seventy-two grotes at seventy-one cents.

Each rix-dollar of Bremen, at seventy-eight and three-quarters cents.

Each marc-banco of Hamburg, at thirty-five cents.

Each milreis of Portugal, at one dollar and twelve cents.

Each milreis of Madeira, at one dollar.

Each milreis of the Azores, at eighty-three and one-third cents.

Each rouble of Russia, at seventy-five cents.

Those taken from the act of May 22, 1846, were:

Each pound of the British Provinces, of Nova Scotia, New Brunswick, New Foundland, and Canada, at four dollars.

Each specie dollar of Sweden and Norway, at one dollar and six cents.

Each specie dollar of Denmark, at one dollar and five cents.

Each thaler of Prussia, and of the Northern States of Germany, at sixty-nine cents.

Each florin of the Southern States of Germany at forty cents.

Each florin of the Austrian Empire, and of the city of Augsburg, at forty-eight and one-half cents.

Each franc of France and of Belgium, at eighteen cents and six mills.

Each lira of Italy, at eighteen cents and six mills.

Each ducat of Naples, at eighty cents.

Each ounce of Sicily, at two dollars and forty cents.

That taken from the act of March 2, 1861, was:

Each new silver florin of Austria, at forty-six cents and nineteen hundredths of a cent.

Following the above enumeration of coins was this passage: "All other denominations in value as nearly as may be to these rates or the intrinsic value thereof compared with money of the United States;" which was taken from the act of 1799.

The above presented the state of the law as, in the judgment of the commissioners, it existed in 1872. But before they made "final report of their doings" to Congress, the act of March 3, 1873, had passed in the meantime, and we are advised that the provisions of the latter act were incorporated in their final report, and all the provisions of the former acts which appeared in their original draft were omitted from that report, showing that in their view the latter were repealed by the act of 1873. This action of the commissioners was afterward sustained by the committee in Congress which revised their labors, and finally by Congress—none of the pro-

visions so omitted by the commissioners appearing in the Revised Statutes.

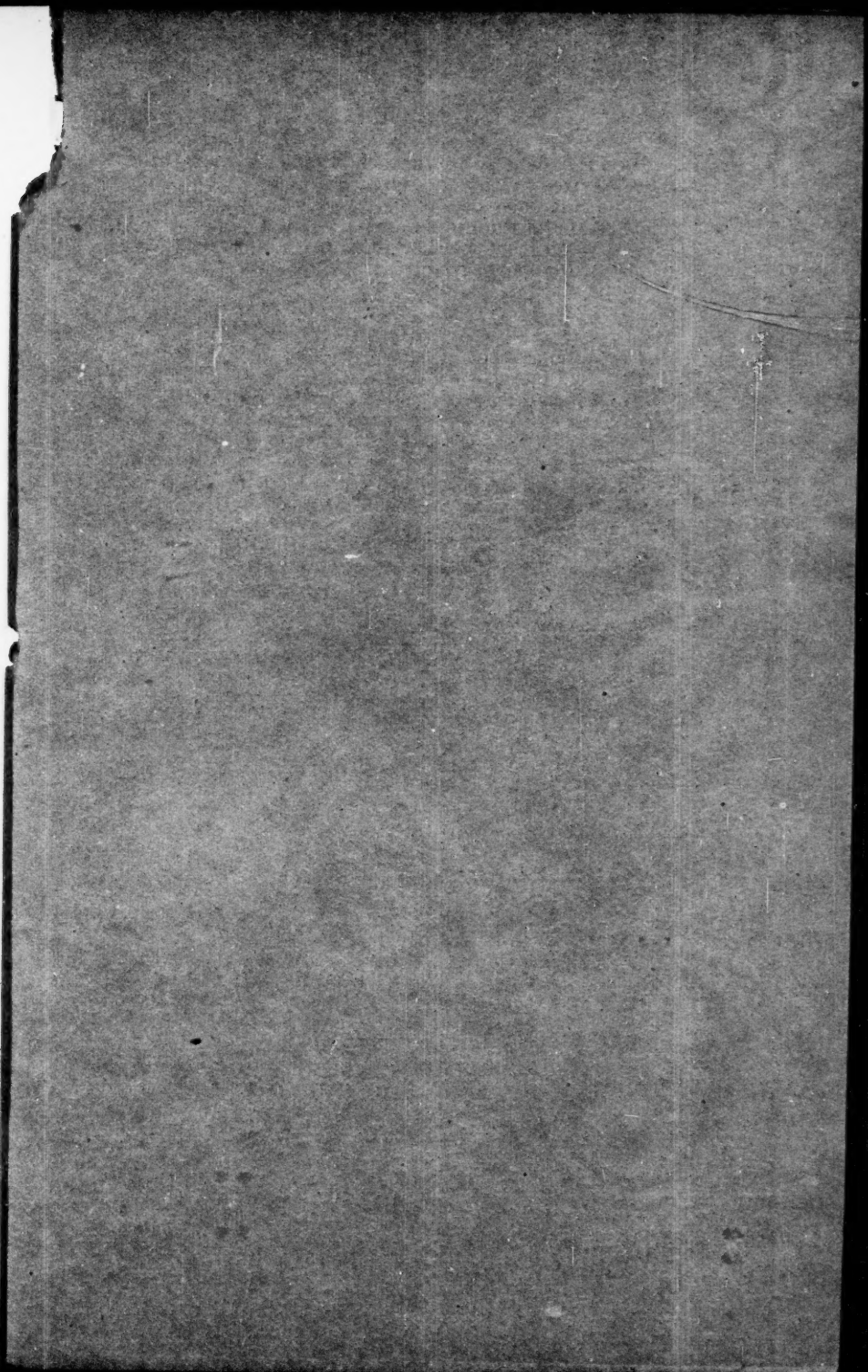
The inference deducible from the course of the committee and of Congress under the circumstances, is obviously this, that neither regarded the omitted provisions as any longer in force after the act of 1873.

VII.

The ruling of the court below seems to have mainly proceeded on the view that the first section of the act of 1873 was intended to modify that series of laws which we have designated in class *four*. But it has been shown that those laws and that section are not in conflict. The object of the former was to provide information for Congress solely; they imposed no rule for the observance of any department of the Government, or of the public, in computing the value of foreign coin in our money. The object of the latter is different, and it does impose such a rule—one which is of general application.

GEO. H. WILLIAMS,
Attorney-General.

C. H. HILL,
Assistant Attorney-General.



In the Supreme Court of the United States.

OCTOBER TERM, 1874.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR, *vs.* AUGUSTE RICHARD AND ANOTHER, DEFENDANTS IN ERROR.	No. 549.

ADDITIONAL BRIEF FOR THE PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1874.

CHESTER A. ARTHUR, PLAINTIFF IN error,
vs.
AUGUSTE RICHARD AND ANOTHER, defendants in error.
} No. 549.

Additional brief for the plaintiff in error.

The counsel for the plaintiff in error desire to call the attention of the court to the following additional points:

1. If there were no repealing clause in the act of March 3, 1873, it is submitted that the act of 1846 would nevertheless be repealed, because, although the two acts "are not in express terms repugnant, yet, if the latter act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act."

United States *vs.* Tynen, 11 Wallace, 92.
Norris *vs.* Crocker, 13 How., 429.
United States *vs.* Jonas, 19 Wallace, 598.
Bartlet *vs.* King, 12 Mass., 537.

But the learned judge below erred in regarding this as the case of a repeal by implication. Section three is an express repeal of all acts and parts of acts inconsistent with the act of 1873. Now, the reason why repeals by implications are not favored, is because there is nothing in the new act to show that the attention of the legislature

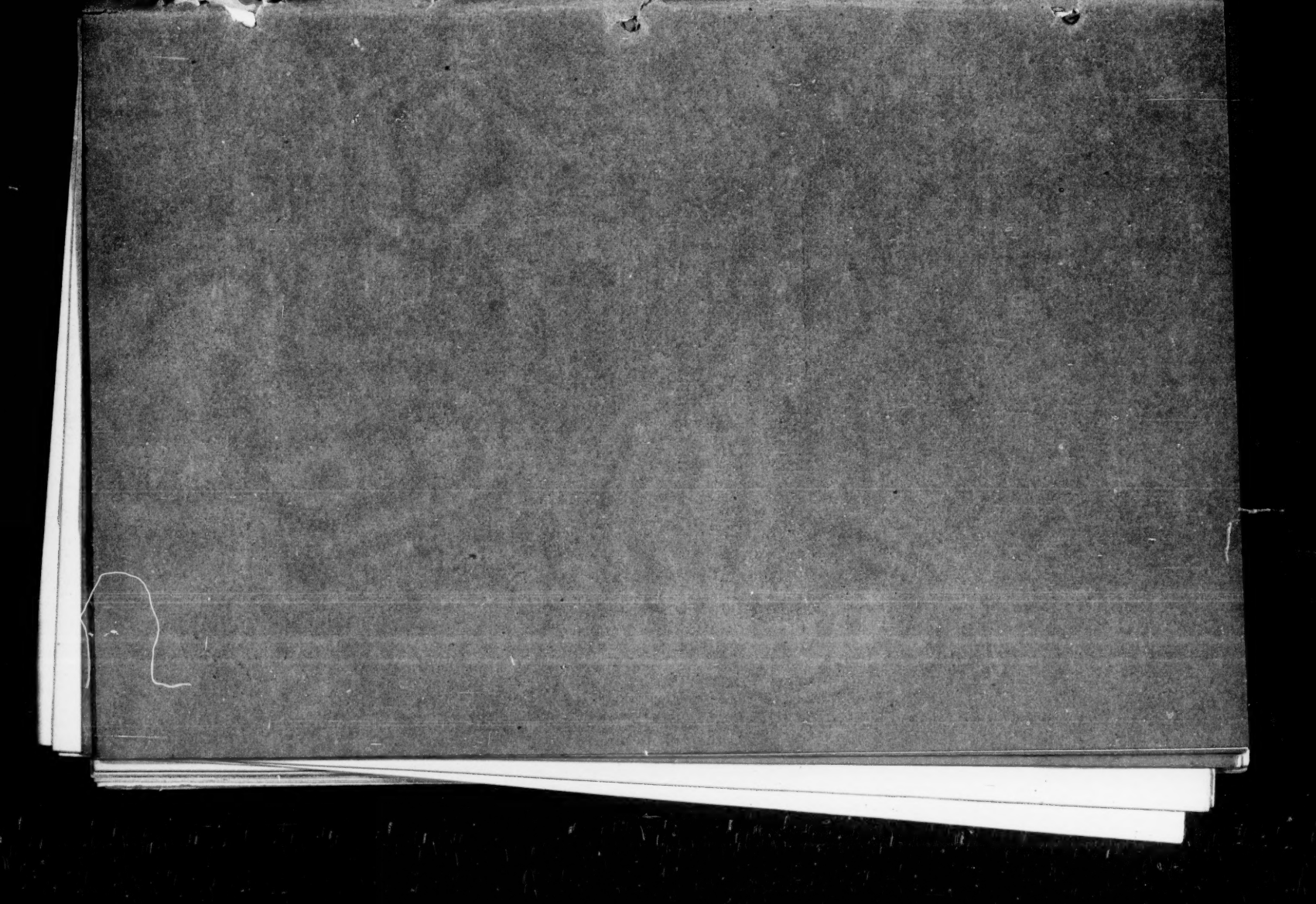
was called to the fact that the statute might be repugnant to former statutes, and therefore that it was intended to change any statutes then existing. Therefore the courts will endeavor to reconcile the statutes if possible, and will only allow the later statute to repeal the former from necessity in accordance with the maxim *leges posteriores priores contrarias abrogant.* When, however, by an express repeal of inconsistent acts, it is apparent that the legislature intended to make an alteration in the law as previously established by statute, it is the duty of the court first to construe by itself the new statute according to established rules of construction, and then to determine what prior statutes are by the statute, as thus construed, repealed.

2. Indirectly the statute of 1873 may change the tariff, but it changes it by removing an anomaly in legislation which prevents the principles of the tariff laws from having their due operation and effect. The first principle of all taxation in civilized countries is substantial equality as to all its subjects, as regards each species of tax, and not an arbitrary inequality in favor of some and against others. The policy of our tariff laws, too, is that the duties are imposed on the actual value of imported goods, not on any technical or factitious value. Section thirty-two of the act of March 2, 1861, (12 Stat. at L., 197,) which has been embodied in all subsequent tariff acts, expressly enacts that "the words *value* and *valued* used in this act shall be construed and understood as meaning the *true market-value* of the goods, wares, and merchandise in the principal markets of the country from whence exported at the date of exportation."

Now, the effect of having the act of 1846 in force is, that while Congress remedied a difference of about four mills in the dollar between the statutory and actual value of the pound sterling or sovereign, it left the franc, for example, at a statutory value of nearly four per centum less than its actual intrinsic value. This is a great discrimination in favor of importers of French goods as against importers of English goods; and it results in the duties on all French, Italian, Belgian, and

Swiss goods being assessed on less than their real value, at a loss to the revenue of more than two millions of dollars a year. This is the only change the construction we contend for, makes in the tariff, and so far from regarding it as an argument against our construction, we regard it as one of the strongest arguments in its favor.

G. H. WILLIAMS,
Attorney-General.
C. H. HILL,
Assistant Attorney-General.



IN THE

Supreme Court of the U. S.

OCTOBER TERM, 1874.

CHESTER A. ARTHUR, COLLECTOR, &c.,
Plaintiff in Error,

vs.

AUGUSTE RICHARD ET AL.,
Defendants in Error.

In Error to the Supreme Court of the United States,

SUPPLEMENTAL BRIEF OF DEFENDANTS IN ERROR.

Extract from a report of H. R. LINDERMAN, Director of the Mint, to Secretary Boutwell, of the "examination of the Branch Mints at San Francisco and Carson City," November 19th, 1872.

[*Extract.*]

VALUATION OF FOREIGN COINS.

The correct valuation of foreign coins is a subject which should receive consideration in connection with the revision of the coinage laws, and I venture to suggest, for reasons hereinafter stated, that provision be made by law, to the effect that in all customs transactions the pound sterling and other foreign gold coins be computed and stated according to the *intrinsic value* in our money of account *of the fine gold* contained.

The importance of this subject will be seen by reference to the existing mode of computing and adjusting exchanges between the United

States and Great Britain. The sovereign, which represents the pound sterling, contains 113.05 grains pure gold, and is of the value of $4.86\frac{6}{10}$ n our money of account, but this is not the value at which it is computed in settlement of accounts between the two countries, and in estimating at the custom houses the duties to be paid on imports. In both cases it is undervalued more than two cents.

This undervaluation of the sovereign entails a loss not only on the American exporter, but on the government. If the exporter has £20,000 placed to his credit in London, he has there the equivalent of $97,300—each pound containing $4.86\frac{1}{2}$, and assuming exchange on London to be at par, he ought to receive the sum stated.

But such is not the case, as when he makes a draft against the sum to his credit, he must, in accordance with commercial custom, compute the pound sterling at $4.84\frac{4}{10}$, and consequently receive only $96,800, subjecting himself to a loss of $420 on the transaction.

The banker, however, who cashes his draft, remits it as cover to his own exchange, and receives the full pound in London.

In the other case, an invoice of British merchandise, amounting to £20,000, and subject to duty, being received, is converted into United States money at the rate of $4.84 to the pound sterling (instead of $4.86\frac{1}{2}$), and the duty levied on $96,800 instead of $97,300.

The valuation of the pound sterling at $4.84, instead of $4.86\frac{6}{10}$ may be claimed to be proper, in view of the fact that to actually convert a sovereign into United States coin entails a deduction of nearly $2\frac{1}{2}$ cents in consequence of the $\frac{1}{2}$ per cent. coinage charge. If the United States coinage charge be the real cause of the undervaluation of the pound sterling, no time should be lost in abrogating it, our commerce and monetary transactions with Great Britain being too extensive to admit of such a disadvantage.

With proper legislation, the disadvantage referred to would be removed and the complicated mode of computing exchange with Great Britain simplified. The par of the pound sterling would be $4.86.5, and quoted at that rate.

The present fictitious par of exchange is arrived at by adding 9 per cent. to the old custom house valuation of $4.44.4 for the pound sterling and when exchange is at par it is quoted at 109. This complicated system also leads to a fictitious quotation of our bonds in the London market, which, when at par, are quoted at a deduction corresponding to the percentage added here to the old valuation above referred to.

That a system so fictitious as this should have been adhered to for nearly a century after the coins and their content of fine metal on which it was originally based have passed away, shows the tenacity with which mankind adhere to monetary terms and customs.

The following section is respectfully suggested :

"That in converting invoices of foreign merchandise received at the several custom houses, and subject to duty, into United States money of account, the monetary unit in which such invoices are stated shall be estimated *at the intrinsic value of the fine gold* contained in the coins representing such units respectively, and it shall be the duty of the Director of the Mint to cause assays to be made annually of such foreign coins as are known to our commerce and present a statement thereof in his annual report."

The following extracts from the report made by Senator Sherman, in 1868, on the subject of international coinage, strongly present the disadvantage under which we labor in connection with our foreign exchanges :

"Every advance toward a free exchange of commodities is an advance in civilization. * * * Every obstruction to commerce is a tax upon consumption ; every facility to a free exchange cheapens commodities, increases trade and production, and promotes civilization. * * * No single measure will tend in this direction more than the adoption of a fixed international standard of value by which all products may be measured, and in conformity with which the coin of a country may go with its flag into every sea and buy the products of every nation without being discounted by the money-changer.

* * * * * * *

"Gold with us is like cotton—a raw product. * * * Every obstruction to its free use, such as the necessity of its recoinage when passing from nation to nation, diminishes its value, and that loss falls on the United States, the country of production.

* * * * * * *

"The United States is a new nation, and therefore a debtor nation. By placing ourselves in harmony with the money units of creditor nations we promote the easy borrowing of money and payment of debts without the loss of recoinage or exchange, always paid by the debtor.

* * * * * * *

"The technical rate of exchange between the United States and Great Britain, growing out of the different nominal values of coin, is a standing reproach which can only be got rid of by unifying the coinage of the two countries, when both the real and technical rates of exchange will be at par, &c."

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If this suggestion by the Mint Director of the *form* of new legislation is the germ of the subsequent law of March 3, 1873, it will be seen that his idea was radically changed before its adoption by Congress.

His basis of computation is the actual value "of the fine gold contained in the coin." To ascertain this would necessarily require an assay and weight of the elements of each coin in the condition in which it appeared in the invoices. But this would be impracticable inasmuch as the Mint Director could not see and handle the coins of the invoice, and in which the goods were procured. The proposed legislation, in terms, requires "assays."

The Mint Director, in 1872, proposes to bring *all* invoices within his system, but the law of 1873 expressly mentions only those made in pounds sterling.

EXTRACT FROM THE "ANNUAL REPORT OF THE DIRECTOR OF THE MINT TO THE SECRETARY OF THE TREASURY, FOR THE YEAR ENDING JUNE 30, 1873," DATED NOVEMBER 1, 1873.

[*Extract.*]

HISTORY OF THE COINAGE.

"This being the first annual report under the coinage act, it appears to be proper to give a short outline of the history of the Mint and coinage, and to refer briefly to the money of account and various questions connected with metallic money.

The Mint was, by the Act of April 2, 1792, established "for the purpose of a national coinage," at Philadelphia, that city then being the seat of Government. By the same act it was provided that the money of account should be expressed in dollars or units, dimes or tenths, cents or hundredths, and mills or thousandths; and that all accounts in the public offices, or proceedings in the courts of the United States, should be kept and had in conformity therewith. Although the ideal unit of the colonial money of account was originally called a pound, the "Spanish dollar" was for many years before the establishment of the present form of government the money of commerce and practical monetary unit, and, whether obligations were discharged in gold, silver or paper money, a certain number of Spanish dollars constituted, specifically or by implication, the standard or measure of value. This had much to do with the selection in 1792 of the dollar as the monetary unit.

By the act referred to, provision was also made for the issue of gold, silver and copper coins. The gold coins were to be rated at 24.75 grains of pure gold to the dollar, and the silver coins at 371¼ grains to

the dollar or unit; the relative value of the two metals being declared in the same law to be as 15 to 1. These standards were continued down to 1834, when an act was passed reducing the pure gold from 24.75 to 23.20 grains to the dollar.

By the Act of January 18, 1837, the fineness of the go'd was increased about three-fourths of one thousandth by changing from the standard of .899225 to 900 thousandths, which increased the pure gold to the dollar from 23.20 to 23.22 grains, at which it still remains.

By this act the fineness of both the gold and silver coins was fixed at 900 thousandths. The silver dollar weighed 412½ grains troy, and the gold was issued at the rate of 25.8 per dollar in value, the actual gold dollar coin not being authorized, however, until 1849. The relation of the metals, therefore, was almost exactly 16 to 1.

The quantity of pure silver in the dollar, as originally fixed, was not changed from the date of its issue down to April 1, 1873, when it was discontinued; but the weight of the coins of less denomination was reduced from 412½ to 384 grains standard per dollar of nominal value by the Act of February 21, 1853, which fixed the weight of the half dollar at 192 grains, and the quarter-dollar, dime, and half-dime at one-half, one-fifth and one tenth of the said half dollar.

The standard weight of these latter coins was, by the coinage act of 1873, increased to 385.8 grains to the dollar, composed of two half-dollars, four quarter-dollars and ten dimes, and corresponding in weight and fineness with the five-franc silver coin of the Latin States of Europe. These coins are issued at the rate of $1.24414 per standard ounce, 803¾ ounces giving coins of the nominal value of $1,000.

The coinage act, in effect, abolished the silver dollar of 412½ grains troy (371¼ grains pure silver), and declared the gold dollar of 25.8 grains, nine-tenths fine (23.22 grains pure gold), the unit of value, and thus legally established gold as the sole standard or measure of value. The issue of the copper coin commenced in 1793, silver in 1794, and gold in 1795.

Overvalued or subsidiary coins, as they are generally termed, are not properly "coins of commerce," being intended for internal circulation in the country issuing them, and, having a higher nominal than bullion value, are inexportable, until expelled by inferior currency.

VALUATION OF FOREIGN COINS AND PAR OF EXCHANGE.

The first section of the act of March 3, 1873, entitled "An Act to establish the custom house valuation of the sovereign or pound sterling of Great Britain, and to fix the par of exchange," provides that "The value of foreign coin, as expressed in the money of account of the United States, shall be that of pure metal of such coin of standard

value," and that "the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and proclaimed on the 1st day of January by the Secretary of the Treasury."

The Department having construed this section to require invoices of foreign merchandise at our custom houses to be converted in the money of account of the United States (for the purpose of levying duties) on the basis of established standards instead of the values given to the various coins representing the same, by different acts of Congress, and which were based on the assay of coins more or less reduced in weight, and therefore not representing the values they were originally intended to denote, it became necessary to obtain authentic information in relation to the units of foreign moneys of account, and the quantity of pure metal declared by law to represent the same. A circular calling for this information was, soon after the organization of this bureau, addressed through the State Department to all our representatives in foreign countries. The opportunity was embraced to ask also for information on various points connected with the coinage of metals and production of bullion. Replies from thirty-five governments have been received, and extracts therefrom will be found in the appendix to this report. These papers furnish a fund of valuable information, not to be found elsewhere in this country, and when the remaining countries are heard from, the entire list should be printed for the use of the different Departments of the Government.

It is proper to state that the earlier acts of Congress fixing the custom house valuation of certain foreign coins were passed at a time when such coins were receivable for duties, and as they were more or less worn, their valuation on the basis of their actual average content of pure metal was necessary in order to protect the Treasury from loss in collecting the revenue. But the case is now different; foreign coins no longer being receivable for customs. In view of these facts the new law very properly makes it obligatory, after the 1st of January, 1874, to deal with established standards, and not the actual or bullion value of coins representing them.

Accordingly, when a foreign invoice is to be converted into the money of account of the United States, the quantity of pure gold declared by law to represent the monetary units respectively of the two countries will be the basis of computation.

From what is above stated it will at once be seen that, under laws yet in force, the various foreign monetary units are undervalued, and that since the worn coins formerly representing them are no longer receivable in the payment of customs duties, the reform contemplated by the act referred to is necessary and proper.

It is expected that the change in the existing mode of computing and quoting sterling exchange will lead to the correct quotation of United States securities in London. Under the present system, which is a relic of colonial days, the par of a dollar is quoted in London at 91½, whereas in all fairness the quotation should be 100. The subject will no doubt receive the careful and ready attention of the proper parties in London, and our securities soon be quoted, as all others are, upon the actual and not a fictitious or technical par.

Notwithstanding the new basis for converting foreign moneys of account into that of the United States, accurate information in relation to the actual average weight, fineness, and value of such foreign coins as are known to our commerce, will be found useful for many purposes. Statements embracing the principal coins of the world, and exhibiting the results of their careful assay (under the instructions of this office) at the Philadelphia Mint, are therefore given in the appendix of this report.

Occasional assays of foreign coins will in future be made at the San Francisco Mint, and Assay office, New York, as well as at Philadelphia, and the results given annually in the Director's report.

GOLD THE STANDARD OR MEASURE OF VALUE; SILVER SUBSIDIARY.

The experiences of different countries, our own included, have conclusively shown that the double or alternate standard of gold and silver, at fixed rates, is subject to derangement from variations in the relative value of the two metals, and that the steady value of the money-unit, which is a matter of great importance, can only be maintained by making one of the precious metals the standard or measure of value, and assigning a subordinate position as to coinage for the other.

Gold being less variable than silver, and of superior value, has been adopted as the standard by all countries which have reformed their monetary laws during the last four years. The list embraces Japan, Germany, the United States of America, Denmark, and Sweden and Norway. Great Britain adopted the gold standard in the year 1816, and still continues it.

France, Belgium, Italy, Switzerland, and Greece still adhere to the double standard, but it is represented, so far as silver is concerned, by only one denomination of full valued and unlimited legal-tender coin, viz., the five franc piece; all other silver coins being overvalued or subsidiary, and of limited tender. The double standard of the countries last referred to was, when adopted, based on the assumption that 15½ ounces of silver were equal in value to 1 ounce of gold. Since that proportion was fixed, however, silver has declined to a rate which gives the relative market value of the two metals as nearly 16½ to 1.

INTERNATIONAL COINAGE.

The subject of international coinage continues to be agitated by the friends of monetary reform, but no substantial progress appears to have been made in the direction of a general assimilation of the principal coinages of the world.

The United States adheres to the dollar, Great Britain to the pound sterling, and the states of the Latin monetary union (France, Belgium, Switzerland and Italy) to the franc.

Germany has provided for a new money of account, with the mark as the unit, and which is represented by fine gold of the value in United States money of 23.82 cents. Denmark, Sweden and Norway have established a new money of account with the crown as the unit, and represented by fine gold of the value of 26.798 cents in United States money.

These diverse moneys of account, to which the price of all commodities has been or will be adjusted, cannot be brought into harmony unless all adopt one of the foregoing, or a new money of account, and that does not appear probable. All, therefore, that can be reasonably expected to result from the frequent discussions of the subject is that gold (and the nine-tenths standard for coinage) will be universally adopted as the measure of value and money of commerce, together with a reasonable but uniform tolerance or variation *from standard* in the manufacture and issue of coins, and a limit of wear from the attrition of circulation; *the first being necessary on account of the impracticability of making all the pieces of exactly the same weight and fineness*, and the latter to avoid frequent recoinages. Provision should also be made for keeping the coins within the prescribed limits of abrasion by replacing those worn below it with new coins at the expense of the public treasury, and if there be charges for coinage, these should be uniform. Gold would then be the universal measure of value, and coins made from it, to represent the moneys of account, would be approximately of the same value by weight; gold being as to gold unchangeable in value, and of the same quality wherever produced.

In this connection it is gratifying to note that Germany, Denmark, Sweden and Norway have in their recent coinage laws conformed to the above stated requirements.

The advantages of any proposed unification of moneys involving alteration in the quantity of fine gold now representing the dollar of account should be decided and well determined before the United States would be justified in adopting it, especially as the funded loan is by law expressly payable in gold coin of the present standard, *and it should be further added that the alterations of standard moneys, weights and measures*

to which the public have long been accustomed are grave matters, and should be undertaken only when imperatively required as a matter of public utility."

This report is dated November 1, 1873, but the first intimation the public had of the intention of the Treasury to apply the first section of the law of 1873 to *all* foreign invoices was the circular of December 20, 1873 (nearly two months later), which is printed on page 38 of the Appendix of the defendant's original brief.

The report emphasizes the facts :

I. That the first section of 1873 refers, in its last clause, to coins different from those of commerce.

II. That the facts required by the first section of 1873 will "furnish a valuable fund of information" for the use of the different departments of the Government, and for many purposes.

III. There is a clear intimation of his own opinion that, "under laws *yet in force*," the new basis of the pure gold in "monetary units" of foreign countries, as distinguished from the pure gold in foreign coins in use, "more or less worn," has not been applied by Congress for customs purposes to any invoices or coins except those of Great Britain.

WILLIAM M. EVARTS,
SIDNEY WEBSTER,
Of Counsel.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1874.

CHESTER A. ARTHUR, COLLECTOR, &c.,
Plaintiff in Error,

vs.

AUGUSTE RICHARD ET ALS.,
Defendants in Error.

In Error to the Supreme Court of the United States.

Brief for Defendants in Error.

IN THE

Supreme Court of the United States,

No.

OCTOBER TERM, 1874.

CHESTER A. ARTHUR,
Plaintiff in Error,

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Defendants in Error.

Statement and Points for Defendants in Error.

This case is brought, by writ of error, before this court, from the Circuit Court of the United States for the Southern District of New York. It is an action at law to recover from the plaintiff in error, collector of customs at the port of New York, an alleged excess of duties exacted by the plaintiff in error, on imported merchandise, and paid by the defendants in error under protest. It was tried in the court below on the pleadings and an agreed statement of facts, and a judgment was entered therein, for the defendants in error. The single question at issue in the court below, and to be argued in this court, is whether the Act of Congress, of March 3, 1873, repeals a prior Act of Congress, of ~~March~~ May 22, 1846, and the secretary of the treasury had authority to issue the circular of December 20, 1873, or any other instructions requiring the collector to estimate the franc of France at $19\frac{3}{1}\frac{0}{0}\frac{0}{0}$ cents in the Custom House computations made on the importations.

Llgislative and Executive History of the Question.

When the first Congress, under the Constitution, assembled in New York, on March 4, 1789, there were no national moneys of account, and, of necessity, no visible symbols thereof in the form of national coinage. The Confederation had legislated to establish a mint and a money unit, but nothing else was done, and the Constitution did not perpetuate the laws of the Confederation. It was not till after more than three years from the meeting of the first Congress that a law was enacted establishing a national mint, creating a national coinage and prescribing an expression of the national money of account. The effect of this legislation was to recognize and declare the national money unit be a *dollar*, as had been foreshadowed in the confederation Laws of 1789, on other topics. The mint was, of course, not in operation so as to produce any of the prescribed national coins till a later period.

As the new government had no national coins of its own it adopted by statute, and dealt by statute with, *foreign* coins. Moneys collected from duties on tonnage and imports constituted in the beginning the resources of the national treasury, and foreign coins were immediately made receivable for such duties, and in 1793 a legal tender for the payment of *all* public or private debts and demands. Therefore, appropriations by Congress *out* of the treasury, and warrants issued by the secretary, necessarily contemplated such foreign coins. This legal circulation of foreign coins for domestic uses, as legal tender for *private* debts was not prohibited till 1857. The revenue law of July 31, 1789, having required, in its eighteenth section, that "the invoices of all importations shall be made out in the currency of the place or country from whence the importation shall be made," and *ad valorem* rates having been levied by that law, it became necessary to prescribe the value at which the coins, appearing in the invoices, should be rated at the custom houses in conversion into the national money of account to obtain dutable values, and also to fix the value in our own money of account of the foreign coins receivable for duties, and in domestic uses for payment of mere private debts. These coins were not "*standard* coins" in absolute harmony with a mint standard, but "coins in circulation" more or less below the mint of quantity of pure metal, and more or less wornor abraded by the attrition of circulation, and therefore with an assessable value correspondingly reduced below what it would have been had there been a conversion of our money of account into another money of account on the basis of the declared legal standard of the country issuing the foreign coins. They were, in that respect, the ordinary coins of

commerce like those of to-day. It will be readily seen how the new government needed to provide by legislation for each and all of these several objects.

The Constitution enabled Congress to do this by the sections authorizing it to lay and collect duties or imports, and to regulate the value of foreign coins. These are popularly known as the Revenue Power, and the Coinage Power. Under the former we find, from the origin of the government, laws fixing the rates at which invoice values, stated in foreign moneys of account, shall be transmuted into our own dollars and cents for the ascertainment of the *dutiable* values of the imported merchandise valued therein. Under the latter power, we find laws scattered through the statute books regulating the value of foreign coins in the domestic uses of circulation, exchanges, and for the *payment* of duties on imports. Under this coinage power, we also find laws of a third class, subsidiary in their character to the second class, because enacted for an incidental and auxiliary purpose, which is the collecting and transmitting of information for the use of Congress, the several executive departments of the government and the general public; the results so obtained not to have the force of *law* until after the further action of Congress upon the subject. We find provisions of law for these three different objects embodied in the same statute, in separate statutes, and even in different clauses of the same section. But it will be found that these are always enacted for distinct objects, and are capable of a distinct classification, which is given in three schedules (marked A, B and C), printed in the appendix of this brief.

Beginning with Schedule A, a pertinent example of legislation under the revenue power is the eighteenth section of the fifth law which Congress enacted under the new Constitution, July 31, 1789, and which is in these words;

"*And be it further enacted*, that all foreign coins and currencies shall "be estimated according to the following rates: each pound sterling "of Great Britain at four dollars forty-four cents; each livre tournois "of France, at eighteen cents and a half; each florin or guilder of the "United Netherlands, at thirty-nine cents; each mark banco of "Hamburgh at thirty-three cents and one-third; each rix dollar of "Denmark at one hundred cents; each rix dollar of Sweden at one "hundred cents; each ruble of Russia, at one hundred cents; each "real plate of Spain at ten cents; each millree of Portugal at one dol-"lar and twenty-four cents; each pound sterling of Ireland at four

" dollars ten cents ; each tale of China at one dollar forty-eight cents ; " each pagoda of India at one dollar ninety-four cents ; each rupee of " Bengal, at fifty-five cents and a half ; and all other denominations of " money in value as near as may be to the said rates ; *and the invoices* " *of all importations* shall be made out in the currency of the place or " country from whence the importation shall be made, and not other- " wise."

The last clause of the section cited, the preceding section, and the thirtieth section of the same law (to which last reference will be made under Schedule B), leave no doubt that the eighteenth section refers to the basis for transmuting the foreign coins of invoices into our own monetary units.

The three statutes first cited on Schedule A use the phrase " all " foreign coins and currencies shall be estimated according to the fol- " lowing rates."

The fourth citation changes the phrase somewhat, and says : " the " foreign coins and currencies, hereinafter mentioned, shall be estimated " *in the computation of duties* at the following rates."

The fifth citation, which is in 1842, relates exclusively to the pound sterling and is an example of covering two objects by the same section, for it declares, that in all *payments* by or to the treasury, the pound sterling shall be deemed equal to four dollars eighty-four cents, " and " the same rule shall be applied in *appraising merchandise* imported, where the value is by the invoice in pound sterling." The previous law of 1789, had fixed the pound sterling at four dollars forty-four cents.

The sixth citation, in 1846, declares, " That in all computations at " the Custom House, the foreign coins and money of account herein " specified, shall be estimated as follows."

The seventh citation uses the phrase " in all computation at the Custom House."

This is the last statute upon the subject till we come to the third section of the Act of March 3, 1873 (the statute now in controversy), which uses, in the first clause of the section language, which is the counterpart of the language used in the law of 1842, respecting the pound sterling :

" Sec. 2. That in all *payments* by or to the treasury, whether made " here or in foreign countries, where it becomes necessary to compute " the value of the sovereign or pound sterling, it shall be deemed equal " to four dollars eighty-six cents and six and one-half mills, and the

" same rule shall be applied *in appraising merchandise* imported, where " the value is, by the invoice, in sovereigns or pounds sterling."

The first citation, under schedule B, of laws passed to regulate the value or use of foreign coins as a medium of *payment* by or to the government, or between individuals, is the thirtieth section of the Act of July 31, 1789. Its language is:

" *And be it further enacted*, that the duties and fees to be collected by " virtue of *this* act, shall be received in gold and silver coin only, at the " following rates, that is to say: The gold coins of France, England, " Spain and Portugal, and all other gold coin of equal fineness, at " eighty-nine cents for every pennyweight; the Mexican dollar at one " hundred cents; the crown of France at one dollar and eleven cents; " the crown of England at one dollar and eleven cents; and all silver " coins of equal fineness at one dollar and eleven cents per ounce."

The Act of 1789 embraces nothing but the regulation of the collection of duties on the tonnage of vessels, and on imported merchandise.

The second citation, in 1790, is a substantial copy of the previous section.

A third citation, in 1793, is the first law fixing the rates at which " foreign gold and silver coins shall pass current as money within the " United States, and be a legal tender for the payment of *all* debts and " demands, at the several and respective rates following, and not other- " wise."

The text of this part of the section reads:

" *Be it enacted by the Senate and House of Representatives of the United* " *States of America in Congress assembled*, That from and after the first " day of July next, foreign gold and siver coins shall pass current as " money within the United States, and be a legal tender for the pay- " ment of *all* debts and demands, at the several and respe page 25 " following, and not otherwise, viz: The gold coins of Gr " and Portugal, of their present standard, at the rate of or " cents for every twenty-seven grains of the actual weight thereof; the " gold coins of France, Spain and the dominions of Spain, of their " present standard, at the rate of one hundred cents for every twenty- " seven grains and two-fifths of a grain, of the actual weight thereof; " Spanish milled dollars, at the rate of one hundred cents for each dol- " lar, the actual weight whereof shall not be less than seventeen penny- " weights and seven grains, and in proportion for the parts of a dollar.

" Crowns of France, at the rate of one hundred and ten cents for each " crown, the actual weight whereof shall not be less than eighteen pen- " nyweights and seventeen grains, and in proportion for the parts of a " crown."

The first citation, under Schedule C, of laws passed to collect and transmit information respecting the weight, fineness and value of foreign coins, is the last clause of the first section of the statute just referred to of February 9, 1793. It is in these words :

" But no foreign coin that may have been, or shall be issued subse- " quent to the first day of January, one thousand seven hundred and " ninety-two, shall be a tender, as aforesaid, until samples thereof shall " have been found by assay, at the mint of the United States, to be " conformable to the respective standards required, and proclamation " thereof shall have been made by the President of the United States."

The second citation in 1806 is in these words :

" And it shall be the duty of the secretary of the treasury to cause " assays of the foreign gold and silver coins made current by this act, " to be had at the mint of the United States, at least once in every year, " and to make report of the result thereof to Congress, for the purpose " of enabling them to make such alterations in this act as may become " requisite, from the real standard value of such foreign coins. And it " shall be the duty of the secretary of the treasury to cause assays of " the foreign gold and silver coins of the description made current by " this act, which shall issue subsequently to the passage of this act, and " shall circulate in the United States at the mint aforesaid, *at least once* " *in every year*, and to make report of the result thereof to Congress, for " the purpose of enabling Congress to make such coins current, if they " shall deem the same to be proper, at their real standard value."

Substantially, the same language is employed in all the acts cited in Schedule C, down to 1857, when there was a prohibition that any foreign coin should be a legal tender for the payment of debts in the United States. The text of the pertinent section of that law reads :

" Sec. 3. *And be it further enacted* : " That all former acts authori- " zing the currency of foreign gold or silver coins, and declaring the " the same a legal tender in payment for debts, are hereby repealed ; " *but* it shall be the duty of the Director of the Mint to cause assays to " be made, from time to time, of such foreign coins as may be known to " our commerce, to determine their average weight, fineness and value,

" and to embrace in his *annual* report a statement of the results there-
" of."

The last citation in Schedule C is the first section of the Law of 1873 page 25
(now in controversy), and reads thus:

" *Be it enacted by the Senate and House of Representatives of the United*
" *States of America, in Congress assembled*, That the value of *foreign* coin,
" as expressed in the money of account of the United States, shall be
" that of the pure metal of such coin of standard value; and the values
" of the *standard* coins in circulation of the various nations of the world
" shall be estimated annually by the director of the mint, and be pro-
" claimed on the first day of January, by the Secretary of the Treas-
" ury."

It is to be observed that eleven years before the enactment of the Law of 1857, prohibiting the "currency," and "legal tender" for private debts, of foreign gold and silver coins, Congress, by the eighteenth Section of the Sub-Treasury Law, of August 6, 1846 (9 Stat., p. 64), required all duties on imports to "be paid in gold and silver coin only, or "in treasury notes, issued under the authority of the United States."

It is also to be observed that from the begining of the government to the present day, Congress has declared, peremptorily and absolutely, in dollars, cents and parts of cents, the rate at which all the undepreciated foreign coins of invoices shall be transmuted into our own money of account to ascertain dutiable values. There has been, in respect to this purpose, and those laws in Schedule A, no reference or allusion to weight, fineness or the result of assay, as (Schedule B), when foreign coins were on the *same* importation to be taken at the Custom Houses in *payment* of duties. No executive officer, either Director of the Mint or Secretary of the Treasury has been permitted, in respect to dutiable values to stand between Congress and the importer. Why? Because, in the first place, the rate of transmutation affected dutiable value, and also, in a system of *maximum* affected the rate and amount of duty. The exercise of those important functions Congress ever refused to delegate, or place in suspense, or make liable to change by an executive act. In the next place, it would be physically impossible for the executive to see, handle and test the foreign coins in which merchandise was required by law to be *invoiced*, but the coin of *payment* could be thus analysed for greater accuracy. And, besides, the executive could not know whether the foreign invoice coins were greatly abraded by long use, although not so

far as to be below a coin standard of legal tender in the foreign country. Hence Congress has personaly adopted and enforced an arbitrary standard, more or less accurate, under which customs officers must transmute foreign invoice coins into our own money in order to obtain a basis for *ad valorem* rates. But the circular of December 20, 1873, attempts to break up this well tried system, and substitute a standard annually shifting without the attention of tariff makers being called to its possible variations.

In respect to depreciated "*currencies*" in which invoices may be made, the sixty-first section of the Act of 1799, after fixing the rate at which all "foreign coins and currencies" shall be estimated, for the purpose of ascertaining dutiable value, declares, in the last clause:

"*Provided*, That it shall be lawful for the President of the United "States to cause to be established fit and proper regulations for esti- "mating the duties on goods, wares and merchandise imported into the "United States, in respect to which the original cost shall be exhibited "in a depreciated *currency*, issued and circulated under authority of any "foreign government."

The President has executed this clause by requiring the consular officers of the United States to append to each invoice a certificate, whenever foreign invoice currency is depreciated, stating the true value of that currency, "estimated in American or Spanish silver dollars."

It is to be noted here, that while the first part of the sixty-first section of this Law of 1799, refers to "foreign coins and currencies," the proviso only relates to "*currency*," which would seem to refer to paper money as distinguished from coin. The volume of Consular Regulations, prescribed by the President of the United States, October 1, 1870, in paragraph 485 (p. 107), gives the text of the President's Regulation in this regard in these words:

"When the value of a foreign *currency* mentioned in the invoice is "not fixed by United States laws, and set forth in the 'Table of Equiv- "alents' (Form, No. 137), or shall have depreciated, or have been de- "based subsequently to the passage of such laws, the invoice must be "accompanied by a consular certificate (Form, No. 133), showing the "value of such currency in United States silver dollars. No such certi- "ficates are required as to invoices of Swiss goods, made out in the "*franc federal*; the franc of France being the standard value thereof."

The certificate referred to (p. 357) is in the following form:

"I, ——, Consul of the United States, do hereby certify "that the true value of the currency of the ——, of ——, in which "currency the annexed invoice of merchandise is made out, is —— "cents, estimated in American, or Spanish silver dollars."

—— ——."

Such certificates are, of course, only necessary when the invoice is made out in paper money, like that which within our own experience and during our civil war, was largely depreciated below our gold standard.

This review of the laws respecting foreign coins, spread upon the statute books from 1789 to 1861, opens the way for an examination of the origin and history of the law of 1873 now under discussion.

The beginning of the legislation which resulted in the last-named law is to be found in the *Congressional Globe* for 1872–73 (p. 172), where it is recorded, December 13, 1872, that Senator Sherman submitted the following resolution, which was considered by unanimous consent, and agreed to:

"*Resolved*, That the Committee on Finance be instructed to inquire "whether the valuation of the *sovereign* or *pound sterling* of Great Brit- "ain at the Custom Houses of the United States, and in the settlement "of accounts between the two countries under existing laws corresponds "with its true or intrinsic value as expressed in the money of account "of the United States, and report by bill or otherwise."

On January 22, 1873 (p. 763), Senator Ames, from the Committee of Finance, submitted a report therefrom, and presented a b of the report is printed in the appendix to this brief, marke copy of the bill is also printed, marked E. The bill was reac to the second reading, and the report ordered to be printed

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"ain at the Custom Houses of the United States, and in the settlement
"of accounts between the two countries under existing laws corresponds
"with its true or intrinsic value as expressed in the money of account
"of the United States, and report by bill or otherwise."

On January 22, 1873 (p. 763), Senator Ames, from the Committee of Finance, submitted a report therefrom, and presented a bill. A copy of the report is printed in the appendix to this brief, marked D; and a copy of the bill is also printed, marked E. The bill was read and passed to the second reading, and the report ordered to be printed (p. 763). page 26/31 page 32

February 11th, 1873, the bill was read a second time in the Senate, considered as in committee of the whole, reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time and passed, without any discussion or debate whatever (p. 1244).

February 11, 1873, the bill was reported from the Senate to the House (p. 1272).

March 3, 1873, without reference to a committee the bill was taken from the speaker's table, read three times, passed without amendment (p. 2119) and approved by the president the same day (p. 2210).

If any assistance can be obtained, in the interpretation of this law, from the title of the measure, the report of the Senate Committee respecting it, and the absence of all discussion of the measure on its passage through both Houses, one must come to the conclusion that the promoters of the legislation sought only the conversion of the British pound sterling into our own money of account on the basis of the Parliamentary declared standard of *that* coin instead "of the average worn or abraded British coin," on which the legislation of 1842 for that coin rested, and the fixing of the par of commercial exchange of *that* coin on the same basis. If either the promoters of this law, or the Senate Committee, or the draughtsman of the bill, had any reference to the congressional value of *other* coins of other countries in custom house transactions, it certainly does not in express words appear in the report of the committee, the title of the bill, or the bill itself.

Certain it is that up to December 20, 1874, no merchant or importer conceived that the first section of this law, referring solely to "standard" coins of an ideal perfection of weight and fineness, instead of those with which mercantile transactions abroad are carried on, could be held to repeal, without any allusion thereto, or to custom house computations, the whole body of statutes declaring explicitly the value of coins in the ascertainment of dutiable values. That the value of the pound sterling was changed, chiefly to obviate the inconvenience of incorrect quotation of government bonds in foreign markets, every one saw and felt. "*Expressio unius est exclusio alterius.*"

A new edition of the volume of General Regulations under the customs and navigation laws of the United States, was promulgated, for the information and government of public officers, by Secretary Richardson, January 1st, 1874. And it was disclosed on the argument of this cause in the court below, that in the preparation of that volume, in the latter part of the year 1873, it occurred to Mr. Evans, of the Navigation Division in the Treasury Department, who had immediate charge of the preparation of the volume, that the estimate of values to be made by the director of the mint, under the first section of the law of 1873, might be used in computations at the custom houses to determine the rates and amounts of duties on imported merchandise (see Customs Regulations, 1874, p. 486). But doubt being entertained respecting the power of the department to direct such values to be employed for such purposes, the advice of the solicitor of the treasury was asked, July 10, 1873, who gave an adverse opinion, which is printed as Exhibit F, in the appendix to this brief.

On September 17, 1873, the Treasury Department issued a circular inviting the attention of *importers*, exchange dealers and the public generally, to the law of the previous March. This circular is printed in the appendix, marked exhibit "G"; and it will be observed that it makes no allusion to any other coin than the British pound sterling, and contains no intimation that the law covers any other coins in respect to Custom House transactions. But, notwithstanding the advice of the law officer of the department, the secretary of the treasury, as appears in the "agreed statement of facts" in this cause, issued another circular to collectors of customs and to the defendants in error, dated December 20, 1873, a copy of which is printed in the appendix as Exhibit "H." Although the first section of the Law of 1873 permits the director of the mint to make only an *annual* "estimate" of foreign coins, and authorizes the secretary of the treasury to proclaim such estimate *only* on the "first day of January," and on no other day, the circular last referred to was issued to collectors of customs, and to the defendants in error eleven days *before* it can be pretended, upon any theory of interpretation, that the secretary had power to make such issue. After this and on December 31st, the Treasury Department, still in doubt notwithstanding the emission of the circular of December 20, 1873, asked the opinion of the attorney-general, which is printed as Exhibit "I." That opinion is not dated till January 8, 1874, but on the first day of that month the secretary issued a general circular, in compliance, as he asserts, with the law of March 3, 1873, and it is herewith printed as Exhibit "K." Two facts in respect to this circular arrest attention: *first*, that it is neither addressed to collectors of customs, nor refers to them; and, *secondly*, that in its second table it gives the weight, fineness and value of foreign coins in circulation, determined by *assay*, as required by the law of 1857. What occasion is there for this second table upon the theory contended for by the defendant in the court below?

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Acting under the circular of December 20, 1873, the defendant, as collector of customs, levied the duties complained of in this suit, thereby increasing the amount thereof from $1,853.35, taking the franc at $18\frac{6}{10}$ cents, to $2,326.32, taking the franc at $19\frac{3}{10}$ cents, an increase in *duty* of a fraction over 25 per cent.

POINTS.

First.—*The law of May* 22, 1846 (9 *Stat., p.* 14), *prescribes the rate at which the collector should have estimated the franc of France, in ascertaining the dutiable value of the importations, and the rate and amount of duty thereon.*

1. That law declares:

> "That in all computations at the custom house, the foreign coins " and money of account herein specified, *shall* be estimated as fol- " lows, to wit: The specie dollar of Sweden and Norway at one " hundred and six cents; the specie dollar of Denmark at one hun- " dred and five cents; the thaler of Prussia and of the northern " states of Germany at sixty-nine cents; the florin of the southern " states of Germany at forty cents; the florin of the Austrian Em- " pire and of the city of Augsburg at forty-eight and one-half cents; " the lira of the Lombardo-Venetian kingdom, and the lira of Tus- " cany at sixteen cents; *the franc of France and of Belgium, and* " *the lira of Sardinia at eighteen cents six mills;* the ducat of " Naples at eighty cents; the ounce of Sicily at two dollars and " forty cents; the pound of the British provinces of Nova Scotia, " New Brunswick, Newfoundland and Canada, at four dollars. And " all laws inconsistent with this act are hereby repealed."

2. It will be conceded by the plaintiff in error that this law has not been repealed by any statute expressly describing it, or referring to it.

3. The plaintiff in error claims that the first and third sections of the law of March 3, 1873, repeal it by *implication.* Such repeal, the defendant in error and the court below deny.

Second.—*Repeals of statutes by mere implications, growing out of subsequent statutes, are not favored, either in the Federal or State Courts.*

1. The Federal rule in regard to repeals by implication is laid down

in U. S. *vs.* Tynen (11 Wallace, p. 92), as follows : " It is a familiar doctrine that repeals by implication are not favored. When there are two acts on the same subject, the rule is to give effect to both if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first ; and even where two acts are not in express terms repugnant, yet, if the latter covers the whole subject of the first, and embraces new provisions plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act."

And in Henderson's Tobacco (11 Wallace, 652), Mr. Justice Strong, in reasserting the rule, adds : " It must be observed that the doctrine asserts no more than that the former statute is repealed so far as the provisions of the subsequent statute are repugnant to it, or so far as the latter statute, making new provisions, is plainly intended as a substitute for it."

Mr. Justice Miller, sitting in circuit, stated his appreciation of the Federal rule in these words :

" It is well settled that no repeal by implication will be allowed, " unless it be a necessary and irresistible implication. The statutes " must be so inconsistent, that if the latter stands, the former *must* " fall." *United States* vs. 10,000 *Cigars* (1 Woolworth's Circuit Court Reports, p. 123).

2. To the same effect is the whole course of judicial decision in the States of Massachusetts and New York, which, in this respect, concur with the opinion of all the courts of all the States.

In Masachusetts :

" Courts should be scrupulous how they give sanction to sup- " posed repeals by implication." Wilde, J., in 2 Pick., 176 (1824) ; and see 13 Pick., 348 ; 20 Pick., 410 ; 24 Pick., 297.

In New York :

" Repeals by implication are disfavored by the law, and never al- " lowed of but where inconsistency and repugnancy are plain and un- " avoidable" (19 Vin. Abr., 525, pl. 132); Ct. of Err., 1827; McCartee *vs.* Orphan Asylum Society, 9 *Cow.*, 437 ; to same effect, *N. Y.*, Com. Pl., 1855 (citing, also, Dwar., 674 ; 9 Barb., 268, 302) ; Mayor, &c., of N. Y. *vs.* Walker, 4 *E. D. Smith*, 258 ; *Supreme Ct., Sp. T.*, 1863 ; Wallace *vs.* Basset, 41 *Barb.*, 92 ; see also, Smith *vs.* People, 47 *N. Y.*, 330. " Repeal by implication is not favored ; and the earlier statute re-

" mains in force, unless the latter is manifestly repugnant to it and " inconsistent with it; or unless the latter act takes some notice of " the former, plainly indicating an intention to abrogate it." *Supreme Ct.*, 1843; Bowen *vs.* Lease, 5 *Hill.*, 221; 1848 (citing also, 9 Cow., 506); Williams *vs.* Potter, 2 *Barb.*, 316; *N. Y. Com.* Pl., 1857; People *vs* Deming, 1 Hilt., 271; S. C. 13 *How.* Pr., 441. " A " construction which repeals another statute should be very clear; " especially when the repeal is of a part of a statute, and seriously " mars the harmony of a system." *Supreme Ct.*, 1850; Hayes *vs.* Symonds, 9 *Barb.*, 260.

3. The reason and philosophy of these rules are obvious, and, when applied to the question at bar, are that if the mind of Congress was, in the legislation of 1873, turned to the value of the franc prescribed by the law of 1846, and intended to change or increase it for *revenue* purposes (if its mind was not turned to the law of 1846, it could not have any intention whatever concerning it), the language employed to work a repeal would have been appropriate, and such as was used in the second section of the law of 1873, respecting the pound sterling. Congress must, by the courts at least, be assumed to finally legislate upon every subject with full knowledge of all subsisting laws *in pari materia*.

Third.—*If Congress intended to increase, by the law of* 1873, *the custom house value of the franc, no valid reason can be assigned for postponing the application of the new valuation, as to that coin, till the first day of the next January, and apply immediately, to current importations the increased valuation of the pound sterling.*

1. The learned attorney-general will concede that the *day* fixed in the law of 1873, on which the secretary can "proclaim," is not merely a direction, but is a limitation on his authority.

2. He cannot proclaim either before or after *that* day.

3. If any coin be omitted it must stand at the old rate till the next returning proclaiming day.

4. If the director of the mint fails or refuses to "annually" estimate, the secretary is powerless, and the rates of duty uninfluenced.

5. In revenue business, the franc, covering France, Italy, Belgium and Switzerland, is as conspicuous and important a coin as is the pound sterling.

6. It will not be claimed by the attorney-general that the Treasury Department can, by the subsequent annual estimate and proclamation of its officers, change the congressional value of the pound sterling, as fixed in the second section of the law of 1873. But why not, and why this discrimination and exception if the first section is a general provision of law, based upon a policy which intends to give to the *executive* the power to adapt custom house computations to a state of facts ascertained or estimated by the mint director, and without the advice or sanction of Congress, pausing to reflct in each case upon the effectto be produced on the revenue?

7. The report of the Senate committee (Exhibit D, of Appendix) can leave no doubt that the purpose of the promoters of the law of 1873 was to obviate the inconvenience of our exchanges with Great Britain, in respect to the disposition of our national, municipal and other corporate securities on the London market, and that for greater uniformity, the custom house valuation of the pound sterling was raised to the *technical par* of an ideal coin. Under the old system of $4.84 our national bonds were quoted below *par* whereas under the new system they will appear above *par*.

Fifth.—*Every law of Congress, from* 1789 *to* 1861, *inclusive, fixing the value of foreign coins for custom house computations, has done so, absolutely and definitely, without reference to weight or fineness as ascertained by assay or estimate, or to values declared by the emitting government, or to technical values, or intrinsic value of pure metal. The secretary of the treasury attempts to give an interpretation to the Law of* 1873, *which will overturn this traditional and well established system.*

1. This system was no doubt adopted when duties were payable in

miscellaneous foreign coins, receivable and ratable at their average bullion value for minting purposes; but when, in 1846, such foreign coins were no longer receivable, no change was made in the rates at which such coins, appearing in invoices, should to ascertain dutiable values, be reduced to our money of account. Nor could any change be fairly made, as is contended for by the plaintiff in error, from the coin of purchase to an ideal, fancy coin unknown to trade. On the contrary, the law of March 2, 1861 (12 Stat., 207), notably continued the old system.

Sixth.—*From* 1793 *to the present date, the director of the mint has been required by law to inform Congress, and has annually informed Congress or the Executive, of the value of foreign coins, but such reports or estimates have never been held, up to* 1873, *to change or affect the rates prescribed by Congress for transmuting invoice values, or, up to* 1846, *to change the legal value of such foreign coins in the payment of duties, or, up to* 1857, *to influence the value of such coins as legal tenders.*

There is no reason to declare that the first section of the law of 1873 should have a larger scope of effect and operation.

1. The law of 1857 did not work such repeal, and yet it required the mint director to report from time to time "the weight, fineness and *value*" of such foreign coins as may be "*known to our commerce.*" This certainly covered the coins in which foreign invoices were to be by law expressed, and as much required the director of the mint to estimate and declare the value as the law of 1873.

Seventh.—*The first section of the law of* 1873 *makes a distinction between "foreign coins," &c., and "standard coins," &c.*

The true interpretation of the first section of the Law of 1873 is this:

1. The first clause refers to all "foreign coins," but the second clause is limited to "*standard* coins in circulation." A coin may be "for-

eign," and yet not "standard," inasmuch as no coin is "standard" if, for any reason of creation or subsequent use, it does not conform absolutely tothe law or decree authorizing its issue.

2. The first clause of the first section is a declaration by Congress of what constitutes, and "shall be," the value, as expressed in our monetary units, of all "foreign coins." "The value," the clause says, "shall be that (*i. e.*, the value) of the pure metal." "Value," where and for what purposes? Let the Laws of 1857 and 1806 answer! The former law required the director of the mint to cause assays to be made of "foreign coins," to determine their "value." Value where, and for what purposes? Certainly not in the Custom Houses! The later Law of 1806 explains how, at that time, and in 1857, and up to 1873, "foreign coins" were rated at a prescribed number of cents for every grain and pennyweight, to be ascertained, according to the standard of pure metal and alloy, by actual assay at the mint. The first clause of the first section of 1873 modifies somewhat this system of 1806 and 1857, by declaring that thereafter the value of "foreign coins" shall be determined by the quantity of "pure metal" therein, as that metal is valued in the 13th and 14th sections of the new Mint and Coinage Law of February 12, 1873, (17 Stat., 426), which is one dollar for every $23\frac{22}{100}$ grains, Troy weight, of pure gold, and the relation of gold to silver as $15\frac{1}{2}$ to 1.

3. The second clause of the first section refers only to "standard coins," if any there be, "in circulation." Their values are to be estimated and proclaimed. On what basis? Clearly on that of the pure metal which the issuing government *declares* should be therein.

4. The "SHALL BE" of the first section is limited to the measure of value to be contained in the estimate of the mint director, and the proclamation of the secretary, for, beyond that result, the law is silent. Where Congress has refrained from speaking, the secretary cannot, by his word, make those estimated results a law to the Custom House. Those results may be preparation for new tariff legislation, but are not yet actual legislation. Between those results, and making them Custom House law there is a great gulf fixed, which the secretary can not bridge over till Congress so declares.

5. That this is the construction put upon the first section by the secretary of the treasury, is seen by an examination of the circular issued by him January 1, 1874 (Exhibit M), where he proclaims two tables. One of these, Table A, contains the value of pure metal in foreign coins as that metal is *declared* by the governments issuing those coins. And the second, Table B, proclaims the value of the actual amount of metal contained in these coins, as that metal is *ascertained* by an actual assay at the mint. This last table gives, as appears by an inspection thereof, the actual value of the coins passing from hand to hand in foreign countries, and in which it is to be assumed invoices are made, inasmuch as the first section of the Law of March 3, 1863 (12 Stats. at Large, p. 737), declares that an invoice shall be made in "the currency "which was actually paid for such goods, wares or merchandise "by the purchaser," and the value of these latter coins is declared to be much less than the value of the ideal or standard coins. But even the values declared in that table have not the force of law till Congress so ordains.

Eighth.—*The last tariff law, prior to the Act of March* 3, 1873, *was that of June* 6, 1872, *which declared in its title, that it was enacted "to re-"duce duties on imports, and to reduce internal taxes." It is matter of common notoriety, that since* 1872 *Congress, though often requested, has persistently refused to increase either the rate or amount of duties. The court will not lightly assume that Congress intended to do indirectly by the law of* 1873, *what it had, from* 1872, *to the present time, refused to do directly.*

1. It will be conceded that the treasury circulars of December 20, 1873, and January 1, 1874, increased the amount of duty on the importation now in controversy $25\frac{51}{100}$ per cent.

2. An exhibit marked L is printed in the Appendix to this Brief, the calculations in which are referred to in the opinion of Judge Shipman, and were admitted on the argument of this cause in the court below to be correct, which shows that on linens, and certain manufactures of flax, the increase in amounts of duties is $18\frac{50}{100}$ per cent. On wines the increase is 140 per cent. *ad valorem*.

3. On a very large class of importations, Congress has adopted the system of minimum and maximum values, or a sliding scale, in assessing duty. The change in the value of the franc influences, therefore, not only the *character* of the import in respect to duty, but increases the dutiable value, as well as the rate and amount of duty.

Ninth.—*It is a well recognized rule of construction in the federal courts, that duties or taxes are never imposed upon an individual, or his property, under color of a statute, if there be serious ambiguity in the language of the law, or if the interpretation be vague or doubtful, and, in all such cases, the judgment of the court must be in favor of the individual and his property.*

1. This rule has been repeatedly recognized in the Executive and in the Judicial Departments.

2. Thirty years ago Chancellor Bibb, one of the secretaries of the treasury, in a circular addressed to collectors and naval officers of the customs, dated August 5, 1844, says:

"The sovereign power of taxation is the source from whence the "most wide-spread wrongs, oppressions and ruin of the people flow "in all governments. The safeguard against the abuse of the tax- "ing power of government intended by our Constitution is in con- "fiding that power to the Congress. It would ill become the exec- "utive department to take money from the pockets of the people by "implication and constructive enlargement of the acts of the Legis- "lature. When the Congress, in the exercise of their power of tax- "ation, have not spoken expressly and clearly; when the words of "the law leave room for rational doubt as to a higher or lower rate "of taxation, the decision of the executive officer should be in "favor of the lower rate. In so doing, the executive action is cer- "tainly within the limit prescribed by law. To take the highest "rate of taxation in such dubious cases would be hazarding a sup- "plement to the legislative will, and an inroad into the region of "the legislative department. Such a mode of construction by the "executive department would not be lenient and remedial, but "onerous and penal."

3. To the same effect are judicial decisions in the Federal Courts.

"Laws imposing duties are never construed beyond the natural "import of the language used, and duties are never imposed upon "the citizen upon doubtful interpretations, for every duty imposes "a burden upon the public at large, and is construed strictly, and "must be made out in a clear and determinate manner from the "language of the statute" (Adams *vs.* Bancroft, 3 Sumner, C. C. R., 387).

"Statutes levying duties on citizens or subjects are to be con- "strued most strongly against the government and in favor of the "citizen or subject, and their provisions are not to be extended by "implication beyond the clear import of the language used."

United States vs. *Wigglesworth*, 2 Story, C. C. R., 369.
United States vs. *Morse*, 3 Story, C. C. R., 87.

In a case tried in the Circuit Court for the Southern District of New York, in the year 1840, and reported in the second volume of Executive Documents, First Session, Twenty-sixth Congress, document No. 49, page 32, where the question was whether articles were dutiable at 50 per cent., as ready-made clothing under the act of July 14th, 1832, or at 25 per cent. as hosiery under the same act, Judge Betts, in giving the opinion of the court, said: "If, then, "these articles might be indifferently placed under either class, and "are known in trade as well by the one name as the other, then "they are to be subjected to the lesser duty; because, if the de- "scription by which the impost is laid is ambiguous or susceptible "of two interpretations, equally conformable to its general import, "that one is to be adopted which is least burthensome to indivi- "duals. It is not to be supposed that Congress designed to im- "pose the higher rate of duty where different ones may apply to "the same subject, unless they express that intent by plain and de- "finite language."

At that time the secretary of the treasury transmitted to Congress reports of revenue cases received from the several district attorneys, and in transmitting this case, with the doctrine announced by Judge Betts, District Attorney B. F. Butler said: "Being satis- "fied with this charge, I did not take any exception to it."

Judge Blatchford announced the same doctrine in *United States* vs. *Ullman* (4 Benedict's District Court Reports, 553): "That prin-"ciple, enforced many times by the courts, was well expressed by "Mr. Justice Nelson in a case (Powers *vs.* Barney, 5 Blatch., C. "C. R., 202), in which he said, in the Circuit Court in this district, "that duties are never imposed upon a citizen in case of serious "ambiguity in the language of an act, or doubtful classification of "articles, or vague or doubtful interpretation, and that in all such "cases the construction must be in favor of the importer."

To the same effect is the language of Judge McKenna, in *Philadelphia & Reading Railroad Company* vs. *Kenney*, August 21st, 1873, 18 vol. Int. Rev. Record, 92.

"Even if they can be regarded as casting doubt upon the mean-"ing of the law, that doubt must be resolved in favor of the citizen. "The exercise of the power of taxation is not to be affirmed upon "conjectural or arbitrary inferences. No burden is to be taken as "imposed upon the citizen, which the government has not clearly "made it his duty to assume. Nor can any portion of his property "be enacted for any purpose, except in pursuance of an unambig-"uous mandate. Whatever degree of liberalty, therefore, may be "allowable in the construction of statutes relating to the revenue of "the government, there is neither reason nor justice in expanding "them, by a strain upon the ordinary import of their words, to "give effect to a hypothetical legislative intention."

4. And, finally, this Supreme Court, in the case of the *United States* vs. *Isham* (17 Wallace, p. 504), has concisely summarized the rule in respect to taxation and duties, which prevails alike in the State and Federal courts, in these words:

"A tax cannot be imposed without clear and express words for "that purpose."

Mr. Justice Hunt adds:

This principle is "based in good sense, and sustained by the "authorities."

Tenth.—*If the court can possibly come to the conclusion that the law of* 1873 *does not peremptorily forbid the construction claimed by the Treasury Department, but is ambiguous thereon, still the court will not say that the secretary had authority to issue the circular of December* 20, 1873, *because such a decision implies that Congress delegated to him a function which it is not to be lightly assumed Congress would delegate to the executive*

1. This court will not, unless peremptorily required by the terms of the law, assume that Congress intended to authorize the secretary of the treasury to fix the values at which foreign coins shall be computed at the custom house, and, without the intervention of Congress, to change these values and rates of duty every year.

2. To fix the value of foreign coins, or to make the estimates of such value by the director of the mint a measure of dutiable values at the custom house, involves, by necessity, legislative discretion, legislative judgment, and legislative will, inasmuch as it changes the rate and amount of duty upon imports.

3. Congress constitutionally exercised its power in the second section of the law of 1873, in respect to the value of the pound sterling, and thus it has always exercised its power in this regard ever since the foundation of the government. The power has never been delegated to any executive officer.

4. That legislative functions cannot be delegated, is a maxim of law too familiar to need any enforcement here.

   Cooley on Constitutional Limitations, p. 116.
   Barto *vs.* Himrod, 8 N. Y. R., p. 483.

5. It is impossible, in view of the second section, to conceive that Congress intended, through the language used in the first section of the law of 1873, to affect, without expressly declaring that purpose, the whole tariff system of the United States from year to year, including the rate and amount of duties to be collected, and to do this by an estimate made by the director of the mint, and a formal proclamation thereon by the secretary of the treasury.

CONCLUSIONS.

I.—The specific rate at which a foreign coin is to be computed in money of account of the United States at the custom house, in ascertaining the dutiable value of foreign merchandise invoiced in such foreign coin, where the rate of duty is by standing laws enhanced according to such computed dutiable value, is an element in the calculation of dutiable value as necessary to be fixed and declared by the judgment, discretion and will of Congress, as the *rate* of duty that is to be levied.

II.—If the statute of 1873 has not expressly declared that the estimate of the mint director shall be made binding on the custom house by the proclamation of the secretary of the treasury, then if the court interprets into the statute such a declaration, it will say that legislation which empowers executive officers to fix and declare the specific rate at which a foreign coin is to be computed at the custom house, in ascertaining the dutiable value of merchandise invoiced in such foreign coin, where the *rate* of duty is enhanced by standing laws according to the computed dutiable value of the goods, is a constitutional delegation of legislative power.

III.—Aside from all questions of constitutional exercise of legislative power, the act of March 3, 1873, is to be construed in connection with previous acts in *pari materia*, and the language of its first section compared with the language of its second section.

IV.—The first section of the act of March 3, 1873, was intended to give to the director of the mint a direction to make, and *how* to make, annual estimates, expressed in the money of account of the United States, in order that Congress might have before it, from time to time, official and reliable information, to be used in future legislation on the tariff, or for any other legislative purpose, and the direction therein given to the secretary of the treasury, to proclaim on the first day of January the estimate made by the director of the mint, conferred on the secretary of the treasury no authority to require, without further legislation, such estimate to be adopted at the custom house in ascertaining the dutiable value of, and the rate as well as the amount of duty on, the merchandise of the defendants in error.

V.—The second section of the act of March 3, 1873, having expressly and specifically enacted a rate at which the sovereign or pound sterling of

Great Britain shall be computed at the custom house in appraising imported merchandise, where the value is, by the invoice, expressed in sovereigns or pounds sterling, the presumption to be applied to the construction of the first section of the same act is that, in relation to all the other foreign coins therein referred to, Congress reserved to itself to apply, or not to apply, at the custom house the information afforded by the estimates of the director of the mint, in computing the dutiable value of foreign goods invoiced in such foreign coins, as Congress might be advised.

VI.—The act of May 22, 1846, directing that "in all computations at "the custom house the franc of France shall be computed at 18 cents 6 mills," has not been repealed by the act of March 3, 1873.

WEBSTER & CRAIG,
Attorneys for Defendants in Error.

William M. Evarts
Sidney Webster
of Counsel

APPENDIX.

Schedule A.

Laws passed to fix the rate at which foreign denominations of money are to be computed in American money, at the Custom House, for the purpose of ascertaining the dutiable value of imported merchandise. Referable to the Revenue Power.

Act of—

February 9, 1789, § 18	1	Statutes at Large,	p. 41.
August 4, 1790, § 40		*Ibid*,	p. 167.
March 2, 1799, § 61		*Ibid*,	p. 673.
March 3, 1801, §§ 1, 2	2	Statutes at Large,	p. 121.
July 27, 1842, §§ 1, 2	5	" "	p. 496.
March 3, 1843		*Ibid*,	p. 625.
May 22, 1846*	9	Statutes at Large,	p. 14.
March 2, 1861	12	" "	p. 207.
March 3, 1873, § 2	17	" "	p. 602.

* This is the law directing the franc of France to be estimated at 18 cents 6 mills, and alleged to have been repealed by the Act of March 3, 1873.

Schedule B.

Laws passed for the purpose of regulating the value or use of foreign *coins*, as a *medium* of *payment*, by or to the Government, or between individuals. Referable to the Coinage Power.

Act of—

August 4, 1790, § 56	1	Statutes at Large,	p. 173.
February 9, 1793, § 1–5		*Ibid*,	p. 300.
February 1, 1798		*Ibid*.	p. 539.
April 10, 1806, § 1–2	2	Statutes at Large,	p. 374.
April 29, 1816, § 1–2	3	" "	p. 332.
March 3, 1819, § 1–2		*Ibid*,	p. 525.
March 3, 1821		*Ibid*,	p. 645.
March 3, 1825, § 20*	4	Statutes at Large,	p. 121.
June 25, 1834, § 1–2		*Ibid*,	p. 681.
June 28, 1834, § 1–2		*Ibid*,	p. 700.
February 21, 1857, § 1–3	11	Statutes at Large,	p. 163.

* Crimes Act, the 20th section punishes the counterfeiting of any foreign gold or silver coin made by law current in the United States.

Schedule C.

Laws passed for the purpose of collecting and embodying information respecting the value of foreign coins. These laws are referable to the Coinage Power, but they are subsidiary to the full exercise of that power.

Act of—

February 9, 1793, § 1, last clause	1	Statutes at Large	p. 300.
April 10, 1806, § 1	2	" "	p. 374.
April 29, 1816, § 2	3	" "	p. 322.
June 25, 1834, § 2	4	" "	p. 681.
March 3, 1843, § 3	5	" "	p. 607.
February 21, 1857, §§ 3, 7	11	" "	p. 163.
March 3, 1873, § 1	17	" "	p. 602.

EXHIBIT D.

42D CONGRESS, 3d *Session.* } SENATE. { REPORT No. 317.

IN THE SENATE OF THE UNITED STATES.

January 22, 1873.—Ordered to be printed.

MR. AMES submitted the following report, to accompany bill S. 1427:

The Committee on Finance, being instructed by the following Senate resolution, to wit:

Resolved, That the Committee on Finance be instructed to inquire whether the valuation of the sovereign or pound sterling of Great Britain, at the custom houses of the United States and in the settlement of accounts between the two countries, under existing laws, corresponds with its true or intrinsic value, as expressed in the money of account of the United States, and report by bill or otherwise,

have had the same under consideration, and submit the following report thereon:

Gold was first made the standard measure of value in Great Britain in the year eighteen hundred and sixteen, by a provision of law as follows:

"That gold coins shall be, in future, the sole standard measure of value, and legal tender of payment, without limitation of amount, and that silver coins shall be legal tender for the limited amount of forty shillings only, at any one time."

At the same time a new coinage of twenty-shilling pieces, called sovereigns, was directed in the following words:

"There shall be nine hundred and thirty four sovereigns and one ten-shilling piece contained in twenty pounds weight troy of standard gold, of the fineness, at the trial of the same, of twenty-two carats fine gold, and two carats of alloy in the pound weight troy."

These provisions have been re-enacted by the English coinage act of April 4, 1870.

The sovereign of Great Britain now in use was first minted in the year eighteen hundred and seventeen, under the act to which reference has been made.

Since nine hundred and thirty-four sovereigns and one ten-shilling piece ($934\frac{1}{2}$ sovereigns) are contained in twenty pounds weight troy standard gold, there must be forty-six and twenty-nine fortieths $46(\frac{29}{40})$ sovereigns (or £46 14*s*. 6*d*.) in one pound weight troy of standard gold. One ounce weight troy will contain one-twelfth as many sovereigns, or £3 17*s*. $10\frac{1}{2}d$., or $934\frac{1}{2}$ pence.

Since one sovereign contains two hundred and forty (240) pence, the weight of a sovereign will be $\frac{240}{934\frac{1}{2}}$ of an ounce weight troy, or of its equivalent, or 480 grains troy, which is 123.2744 + grains weight troy. That is, one sovereign of standard gold weighs that number of grains, but one-twelfth is alloy; therefore the pure gold in a sovereign weighs 113.0016 + grains troy.

The standard gold dollar of the United States weighs 25.8 grains troy, whereof one-tenth is alloy. Therefore the pure gold in the standard dollar weighs 23.22 grains troy.

As 23.22 grains troy is the weight of the pure gold in the standard dollar, and 113.0016 + grains troy the weight of the pure gold in the standard sovereign, the quotient resulting from dividing the second number by the first is the value of the pure gold in the standard sovereign, as expressed in dollars and cents, which gives us $4.86656+. This is the true or intrinsic value of the sovereign or pound sterling as expressed in the standard dollar of the United States at the present time.

By an act of Congress approved July 27, 1842, it is provided that "in all payments by or to the Treasury, whether made here or in foreign countries, when it becomes necessary to compute the value of the pound sterling, it shall be deemed equal to $4.84; and that the same rule shall be applied in appraising merchandise imported when the value is by the invoice in pounds sterling."

Under this act the invariable practice of the accounting officers of the United States Treasury Department has been to adjust accounts when made out in the moneys of the United States on the basis of $4.84 to the sovereign or pound sterling; and the same standard has been employed in appraising merchandise imported when the value is by the invoice in pounds sterling.

In this valuation ($4.84) of the pound sterling; the standard aimed at was its average value as then in circulation in the United States. Coin in use soon falls below the standard value by wear and abrasion.

This we shall call the congressional valuation.

There is still another valuation for the sovereign or pound sterling; this is its commercial valuation or its *technical par* or par of exchange between Great Britain and the United States, as it is called, of $\$4.44\frac{4}{9}$. This is the valuation of the sovereign given in 1799 by the Congress of the United States.

Here we find the valuation differs widely from the true or intrinsic value as well as the congressional value, to explain which it will be necessary to glance at the history of the coinage laws of Great Britain and this country.

In the year sixteen hundred and one the British standard of silver coin was established, by which 444 grains of troy pure silver were rated at 5*s*. 2*d*., or 62 pence.

In the year seventeen hundred and seven, in the reign of Queen Anne, under an act for ascertaining the rates of foreign coins in Her Majesty's plantations in America, the Spanish dollar, or more strictly speaking "Mexico pieces" and "pillar-pieces," was rated at 4*s*. 6*d*., or 54 pence, that being the value, according to the standard of 1601, of $386\frac{7}{8}$ grains troy of pure silver contained in that coin.

Now, this Spanish dollar containing $386\frac{7}{8}$ grains troy of pure silver as tested more than a century and a half ago, long before the gold dollar of the United States was dreamed of, even long before the United States themselves were thought of, when the moneys of her Majesty's plantations in America were those of the mother country, when the test was made under an act to ascertain the rates of *foreign* coins in said plantations, this dollar is the dollar which we have inherited as the commercial dollar and which burdens us with a technical par. But this foreign dollar, this Spanish dollar of 1707, has undergone changes of value as the decades passed by.

In the year seventeen hundred and seventy-two the pure silver in the Spanish dollar was reduced to $377\frac{1}{4}$ grains troy, a diminution of $9\frac{5}{8}$ grains pure silver.

In the year seventeen hundred and eighty-five the Congress of the Confederation adopted the *dollar* as the monetary unit, and in the following year it was decided that it should contain $375\frac{64}{100}$ grains troy of pure silver. This is still less than the Spanish dollar of 1772, and in fact was based on the average value of the Spanish dollars then in circulation, which were, as all coin much used must be, slightly below the standard value even when the coinage is honestly conducted.

In the year seventeen hundred and ninety-two Congress adopted a money of account with the dollar as the unit to be represented by a coin

containing $371\frac{1}{4}$ grains troy pure silver, which is the present quanity of pure silver in our dollar.

Thus we see the quantity of pure silver in both the Spanish dollar and that of the United States has been constantly diminishing, without, however, holding, or pretending to hold, any fixed proportion with the value of silver bullion or with any changes made in the coins of Great Britain.

And if anything further was needed to make this valuation of the dollar a thing of the past, a pure fiction so far as British money is concerned, we had it when, in 1816, Great Britain, by act of Parliament, changed its standard from silver to gold.

The simple statement of the facts shows that in treating of the commercial dollar with its valuation of 54 pence, and of the sovereign with its value of $\$4.44\frac{4}{9}$ derived therefrom, we are dealing not with realities, but only with the names of things which have long since ceased to exist.

It is not strange, therefore, that those who are not dealers in money should be puzzled by our system of exchange with Great Britain, and that they are filled with forebodings of financial disaster when viewing the quotations of our bonds abroad, and when being daily informed that the rate of exchange is always against us.

But how is this *par of exchange*, $\$4.44\frac{4}{9}$, of course invariable, and which controls the *exchange* which is always against us, ascertained? It is as follows:

The real dollar of 1707, and the fictitious dollar of to-day, being one and the same in value, are rated at 4*s*. 6*d*., or 54 pence. A sovereign, contains 240 pence, or four and forty-four four-ninths ($4.44\frac{4}{9}$) of these fictitious dollars of 54 pence each. But this par of exchange, or technical par, whether expressed in the terms of the money of account of the United States ($4.44\frac{4}{9}$, or in those of Great Britain (54 pence), differs from the true par in just so much as the value of this fictitious dollar differs from the true or intrinsic value of the dollar of our present money of account. The true or intrinsic value of the gold dollar of the United States is $49\frac{5}{16}$ pence very nearly, which we ascertain as follows: The sovereign contains, as has already been shown, 113.0016 + grains weight troy of pure gold, and our gold dollar 23.22 grains weight troy pure gold; and, as there are 240 pence in the soverign, there must be in the dollar $\frac{23.22}{113.0016+}$ thereof, or $49\frac{5}{16}$ pence.

Now, the difference between this real dollar ($49\frac{5}{16}$ pence) and the fictitious dollar (54 pence) is $9\frac{1}{2}$ per cent. very nearly of the real dollar

Nine and one-half per cent. of $49\frac{5}{16}$ added thereto makes 54 to within a small fraction. It may be asked whence this $9\frac{1}{2}$ per cent.? This, too, is a fiction. We have the fictitious dollar, called the *par of exchange*, and in comparing it to the real dollar the fiction of the *difference in the exchange* comes in in the form of this percentage. Did our real dollar possess any other value, the difference in the exchange would be different; but as it is, $49\frac{5}{16}$ and 54 result in this difference of $9\frac{1}{2}$ per cent. of the first. A second fiction is thus resorted to to correct the evils of the first.

As the *par of exchange*, being the dollar, expressed in the terms of the money of account of Great Britain, is 54 pence, the *par* expressed in the terms of the money of account of the United States will be ascertained by dividing 240 pence by 54, which gives us $4.44\frac{4}{9}$, the number of such dollars in the sovereign. The sovereign contains of real dollars 4.8665+. Although $9\frac{1}{2}$ per cent. of the real dollar was added thereto to give us the fictitious or *par* dollar, we now find that this percentage will have to be taken of the fictitious sovereign and added thereto to give us the real sovereign, which is what should be expected, inasmuch as the same number, 240, was the dividend in both cases.

Consequently we should expect to find, as we do find, that the *technical par*, $\$4.44\frac{4}{9}$, increased by $9\frac{1}{2}$ per cent., of itself will give us the real par, or the valuation of the sovereign as expressed in our money, $4.8665, to within a small fraction.

We see that the fictitious sovereign is less than the real one by .422+ cents; and, as a matter of course, when the exchange between the two countries is at a true par, a certain percentage must be added to the false standard, short in its measure, to make it reach the true standard; and so long as such a false standard is used, so long will the exchange be quoted against us, even though the true exchange be in our favor.

This *par of exchange* exists between no other two nations. It is entirely arbitrary; it is unnecessary; it is annoying; it is absurd.

For the better understanding of this point we will examine the values given one of our bonds for a thousand dollars ($1,000) in the London market.

As the true value of the sovereign is $4.86656+, there must be in the one thousand dollar ($1,000) bond 205.484 such sovereigns, or £205 9*s*. $8\frac{1}{8}d$. But if we assume the value of the sovereign to be $\$4.44\frac{4}{9}$, the *par of exchange*, there will be of such sovereigns in the $1,000 bond 225—£255, by which it is seen that the $1,000 bond is given a valuation which is some £$19\frac{1}{2}$ more than its true or intrinsic value, and of course it cannot be quoted at par unless its premium is sufficient to equal or exceed the fictitious increase of value thus given it.

The $1,000 bond will be at a true par whenever it is worth £205.484+, but it is quoted below par because it is not worth £225. Thus it is seen that our bonds are quoted below par when, in point of fact, they are at or above par.

Frequently State and corporation bonds sent abroad are expressed in pounds, shillings and pence, or in the dollar at its true value, or nearly so; and such bonds are quoted above the United States bonds, though the latter are quoted higher at home, and are in reality more valuable.

An examination of the disposition of our securities abroad will show that the *inconvenience* of this system of exchange is the least of evils attending it.

By what has been stated it will be seen that the true or intrinsic value of the sovereign of Great Britain, as expressed in the money of account of the United States, is $4.86656; that the *compressional valuation* is $4.84; and that the commercial valuation, known as the *par of exchange* or *technical par*, is $4.44⅘.

The first is the value of the pure gold in the sovereign, as expressed in dollars and cents; and, as a measure for the comparison of the moneys of the two countries is sought, that which will give the true value of the pure gold in their standard coins would seem to fill the requisite conditions.

The second is the valuation given by Congress, it being the average value of those actually tested in 1842. *It is to be observed that it was* the average *worn or abraded British coin with which our standard coin was compared. Would it not be wiser to compare our standard coin with the British standard coin;* if the British worn or abraded coin is taken as a standard, ought not *our own worn and abraded coin* to be compared with it?

The inconvenience, not to say the evils, of the fictitious sovereign, based on the Spanish dollar of the seventeenth century, and known as the *par of exchange*, is recognized by all and cannot be too quickly remedied.

It is the opinion of the committee that such a valuation should not be recognized by any of the Departments of the Government; and that they should use every means in their power, abroad as well as at home, *to attain a system of exchange based on true or intrinsic values.*

EXHIBIT E.

42d CONGRESS, 3d Session.

S. 1427.

[Report No. 317.]

IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1873.

Mr. AMES, from the Committee on Finance, submitted a report (No. 317) accompanied by the following bill, which was read and passed to a second reading :

A BILL

To establish the Custom House value of the sovereign or pound sterling of Great Britain, and to fix the par of exchange :

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value ; and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury.

SEC. 2. That in all payments by or to the Treasury, whether made here or in foreign countries, where it becomes necessary to compute the value of the sovereign or pound sterling, it shall be deemed equal to four dollars eighty-six cents and six and one-half mills, and the same rule shall be applied in appraising merchandise imported where the value is, by the invoice, in sovereigns or pounds sterling, and in the construction of contracts payable in sovereigns or pounds sterling ; and this valuation shall be the par of exchange between Great Britain and the United States ; and all contracts made after the first day of January, eighteen hundred and seventy-four, based on an assumed par of exchange with Great Britain, of fifty-four pence to the dollar, or four dollars forty-four and four-ninths cents to the sovereign or pound sterling, shall be null and void.

SEC. 3. That all acts and parts of acts inconsistent with these provisions be, and the same are hereby, repealed.

EXHIBIT F.

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., July 17, 1873.

Sir,—I have the honor to acknowledge the receipt of your letter of the 10th instant, setting forth that the Acts of March 2, 1799, section 61; March 3, 1843; May 22, 1846; February 21, 1857, and of March 2, 1861, declare the value of certain foreign coins in the money of account of the United States, and also the rate at which they shall be estimated in computations at the various Custom Houses respecting the original cost of imported goods, and that the Act of March 3, 1873, establishing the value of the sovereign or pound sterling of Great Britain, provides also "that the value of foreign coin, as expressed in the money of account of "the United States, shall be that of the pure metal of such coin of stand-"ard value," as estimated annually by the Director of the Mint of the United States, and requesting my opinion as to whether or not the latter act repeals former laws as respects computations of the values of foreign moneys and invoices at Custom Houses in ascertaining duties, and if so, when such provision takes effect.

In regard to the question submitted, I have to say, that all the provisions of the Act of March 3, 1873, in relation to computations at Custom Houses, are confined to the sovereign or pound sterling, and the amount at which it is to be valued is thereby established.

If the act were intended to have so sweeping an effect as to change all values of foreign moneys in customs transactions, surely legislation of such importance would have been more plainly expressed.

The Act provides that "the values of the standard coins in circula-"tion, of the various nations of the world, shall be estimated annually "by the Director of the Mint, and be proclaimed on the first day of "January by the Secretary of the Treasury."

The same provision is incorporated in former acts, with this difference, that the Secretary of the Treasury was required to report the result of the annual estimations to Congress for such action as might be deemed advisable.

SEC. 3. Act of February 21, 1857, provides that it shall be the duty of the Director of the Mint to cause assays to be made from time to time, of such foreign coins as may be known to our commerce, to determine their average weight, fineness and value, and to embrace in his annual report a statement of the results thereof. Yet, notwithstanding this and

similar provisions in other acts, the values for custom house computations remained as established by special legislation, naming the different foreign coins and enacting, as in the case of the pound sterling, the exact sum in the currency of the United States at which they should be respectively rated.

In my judgment, therefore, a proper construction of the terms of the Act of March 3, 1873, cannot give it the effect to repeal former laws relating to the value of foreign moneys for the purposes of customs revenue, except in the single case of the pound sterling.

I am very respectfully,

E. C. BANFIELD,
Solicitor of the Treasury.

Hon. WM. A. RICHARDSON,
Secretary of the Treasury.

EXHIBIT G.

[*Circular.*]

1873.
DEPARTMENT No. 116.
Mint Bureau No. 5.

TREASURY DEPARTMENT,
WASHINGTON, D. C.
September 17, 1873.

The Secretary of the Treasury invites the attention of importers, exchange dealers, and the public generally, to "An Act to establish the custom house value of the sovereign or pound sterling of Great Britain, and to fix the par of exchange," passed March 3, 1873, which is as follows, viz.:

§ 1. That the value of foreign coin, as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation, of the various nations of the world, shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury.

§ 2. That in all payments by or to the Treasury, whether made here or in foreign countries, where it becomes necessary to compute the value

of the sovereign or pound sterling, it shall be deemed equal to four dollars eighty-six cents and six and one-half mills; and the same rule shall be applied in appraising merchandise imported, where the value is by invoice, in sovereigns or pounds sterling, and in the construction of contracts payable in sovereigns or pounds sterling; and this valuation shall be the par of exchange between Great Britain and the United States; and all contracts made after the first day of January, 1874, based on an assumed par of exchange with Great Britain of fifty-four pence to the dollar, or four dollars forty-four and four-ninths cents to the sovereign or pound sterling, shall be null and void.

§ 3. That all acts and parts of acts inconsistent with these provisions be, and the same are hereby, repealed.

So much of this act as relates to the custom house and other Government valuations of the pound sterling, has already been considered by the Department, and the *Table A*, hereunto annexed, has been issued for the guidance of public officers engaged in such computations. That branch of the act, therefore, calls for no further notice.

The present circular concerns itself more particularly with the effect of the law on transactions of *exchange* with Great Britain, and the alterations which will become necessary by its peremptory prohibition, after the close of the present year, of all contracts based on the erroneous but customary *par* with that country.

By a usage, dating back to an early period in our colonial history, the dollar has been rated as equivalent to 54 pence sterling; the pound, therefore, at $\$4.44\frac{4}{9}$ or £9 = $40. The dollar, which was the original subject of comparison, was the old Spanish silver dollar, or piece of eight reals, and the computation at the time was approximately true, as compared with the British silver money. In all transactions of exchange, involving the dollar and British money, the *par* was, therefore, assumed at 54 pence to the dollar, any differences from this par being attributable to premium or discount. The practice thus begun has been continued through all the changes, and they are considerable, which have affected the coins current in this country and in Great Britain during nearly two centuries; for the British standard is now *gold*, and the Spanish dollar no longer circulates with us, but our unitary dollar is a *gold* coin, worth nearly 9 per cent. less than a dollar of 54 pence.

The error, which thus stands at the basis, is corrected by expedients which become the source of new errors, by which the public is led astray, and even the Government credit affected.

Thus, the true par value of the pound sterling being $4.86,65, and the fictitious par at the assumed rate of 54 pence to the dollar being $4.44,44, a dealer selling one pound of exchange at the true par will charge a nominal *premium* of $9\frac{1}{2}$ per cent., since $9\frac{1}{2}$ per cent. on $4.444 give $4.86,6. In appearance exchange is heavily *against* this country, when, in truth, there is neither premium nor discount.

Again, if a bond of the United States is sold at actual par in London, the *quotation* of the bond would be $91\frac{5}{11\,6}$ per cent. only. For the real par, say of a one thousand-dollar bond (at $4.8665 per £), being (stated decimally) £205.486, and the nominal par at 54 pence per dollar being £225, the London dealer, by quoting $91\frac{5}{11\,6}$ per cent. on the latter sum, arrives at the true or nearly true par value.

Thus, through a pure fiction, retained by usage only, and not by any law, exchange with Great Britain appears permanently *against* the United States, while our bonds are quoted at a fixed *discount* of nearly $8\frac{3}{4}$ per cent. below their real value.

The remedy for such anomalies is the abandonment of the false par or valuation of the moneys of the United States in British money, and it is to this object that the law referred to is directed.

It is to be observed that while the act positively prohibits contracts based upon the false par, it prescribes no rule for the quotation of sterling exchange, or for our securities sold for sterling money. As to the latter class of transactions, since they occur in Great Britain only, the subject is of course beyond any direct control of Congress; as to the former, a few remarks will be appropriate.

In quoting exchange on foreign countries, it has never been the practice, except in dealings with Great Britain, to assume a par upon which a percentage is rated. The universal rule, except in this case, is to quote the money of our country against the money of other countries. Thus, on France and the franc countries, exchange is quoted in francs and centimes to the dollar; on Prussia, cents to the thaler; on Frankfort, cents to the florin, and so on. In reforming our practice with Great Britain, it will be judicious to adopt the same method, quoting exchange either in dollars and cents to the pound sterling, or in pence and fractions to the dollar. In the Spanish American States and in China, it is customary to quote exchange on Great Britain in pence to the dollar, but for the United States the Secretary would recommend quotations in dollars and cents to the pound sterling, for the following reasons: 1st. The variation in quoting one cent to the pound is near enough to denote the customary variations of exchange in the market, so that the use of fractions in stating the prices will be unnecessary.

One cent variation corresponds very nearly to one-quarter per cent. in the exchange upon the fictitious par. 2d. As the dollar of the United States is a gold coin, and of the South American States and China a silver coin, a distinction in the unit for quoting exchange is for this reason desirable; since it would thus be understood, without further explanation, that a quotation of dollars and cents to the pound, referred to a *gold* dollar, and of pence and fractions to the dollar, to a *silver* dollar.

The law, while prescribing the close of the present year as the term for the discontinuance of the old rating of exchange, does not prohibit, but rather invites an earlier change in the practice. In order to avoid the inconveniences of a postponement, to the last moment, the Secretary would recommend that the change be entered upon at once. With a view to facilitate this he appends hereto a series of tables which he trusts will be found to embody useful information and aid in passing from an erroneous to a correct system.

Table A.—This has been already referred to as facilitating the valuation of sterling money for the computation of duties at the custom houses.

Table B.—This table shows the value of the pound sterling in dollars and decimals corresponding to exchange quoted according to the method at present in use—namely, in percentages of the fictitious par. The object of this table is to guide those accustomed to think of rates in the present way towards the corresponding or approximate rates quoted in dollars and cents.

Table C.—This is a comparative table showing what equivalent expressions correspond to exchange quoted in dollars and cents to the pound. The object is the same—namely, to make those accustomed to old ways see their relation to the new.

Table D.—This is a comparative table of a corresponding character, only based on the supposition of exchange quoted in pence and fractions to the dollar.

Table E.—This table exhibits the errors of the London mode of quoting United States securities in percentages. It shows the real or true percentage corresponding to the fictitious percentage based upon the false par of 54 pence to the dollar.

In connection with this last table, the Secretary would remark that, while only the action of the London Stock Exchange can bring a remedy for this unfair method of quotation, the dealers in securities and the press of our own country may, in a measure, correct the evil by converting the false quotations into the true, for which object the table will be found convenient.

Table F.—This is designed to facilitate calculations in decimals of a pound sterling. In transactions of sterling exchange, it will be convenient to calculate decimally. The table furnishes a ready means of stating shillings and pence in decimals of a pound, and, on the other hand, converting the latter into shillings and pence.

Finally, the Secretary would urge upon those in a position to guide in introducing the changes demanded by the law, the importance of acting promptly, so that by conference and interchange of views, an agreement may be reached as to the most convenient time and manner of effecting them.

WM. A. RICHARDSON,
Secretary of the Treasury.

EXHIBIT H.

[*Circular to Collectors of Customs and Others.*]

1873
DEPARTMENT No. 146.
Secretary's Office.

TREASURY DEPARTMENT,
WASHINGTON, D. C., December, 20th, 1873.

The following list of standard values of foreign currencies in the money of account of the United States will be used in the computation of customs duties from and after the first day of January, 1874, and until otherwise provided by law and regulations, viz.:

Foreign moneys of account and their values in United States money of account.

Country.	Monetary unit.	Standard.	Value in U. S. money of account.
Argentine Republic	Peso fuerte	Gold	$1.00,00
Austria	Florin	Silver	.47,60
Belgium	Franc	Gold and silver	.19,30
Bolivia	Dollar	Silver	.96,50
Brazil	Milreis of 1,000 reis	Gold	.54,56
British Possessions in North America	Dollar	Gold	1.00,00
Central America	Dollar	Silver	.96,50
Chili	Peso	Gold	.91,23
China	Tael	Pure silver	1.61,00
Cuba	Peso	Gold	.92,58
Denmark	Crown	Gold	.26,80
Ecuador	Dollar	Silver	.96,50
Egypt	Dollar of 20 piasters	Silver	1.00,39
France	Franc	Gold and silver	.19,30
Great Britain	Pound sterling	Gold	4.86,65
Greece	Drachms	Silver	.19,30
German Empire	Mark	Gold	.23,82
Hayti	Dollar	Silver	1.00,00
Jamaica	Pound sterling	Gold	4.86,65
Japan	Yen	Gold	.99,70
India	Rupee of 16 annas	Silver	.45,84
Italy	Lira	Gold and silver	.19,30
Liberia	Dollar	Gold	1.00,00
Mexico	Dollar	Silver	1.04,75
Netherlands	Florin	Silver	.40,50
Norway	Crown	Gold	.26,80
Paraguay	Peso	Gold	1.00 00
Peru	Dollar	Silver	.96,50
Porto Rico	Peso	Gold	.92,58
Portugal	Milreis of 1,000 reis	Gold	1.08,47
Russia	Roubles of 100 copecks	Silver	.77,17
Sandwich Islands	Dollar	Gold	1.00,00
Spain	Peseta of 100 centimes	Gold and silver	.19,30
Sweden	Crown	Gold	.26 80
Switzerland	Franc	Gold and silver	.19,30
Tripoli	Mahbub of 20 piasters	Silver	.87.09
Tunis	Piaster of 16 caroubs	Silver	.12,50
Turkey	Piaster	Gold	.04,39
United States of Colombia	Peso	Silver	.96,50
Uruguay	Patacon	Gold	.94,98
Venezuela	Peso	Silver	.77,73

The above rates will be taken in estimating the values of all foreign merchandise made out in any of said currencies imported on or after January 1st, 1874, but will not be applied to goods imported before that day.

I am, very respectfully,

WM. A. RICHARDSON,

Secretary

EXHIBIT I.

DEPARTMENT OF JUSTICE,
Washington, January 8, 1874.

Hon. WILLIAM A. RICHARDSON,
Secretary of the Treasury:

Sir,—I have the honor to acknowledge the receipt of your letter of the 31st ult. requesting an opinion from me as to whether, under the act of March 3, 1873 (17 Stat., 602), the Secretary of the Treasury is required or authorized to direct that computation at custom houses in the reduction of invoices expressed in foreign values to the money of account of the United States shall be made at the rates estimated by the director of the mint and proclaimed by the secretary of the treasury, or that fixed by the previous laws.

By the first section of said act it is provided "that the value of foreign coin as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the director of the mint, and be proclaimed on the 1st of January by the secretary of the treasury."

The second section provides "that in all payments by or to the treasury, whether made here or in foreign countries, where it becomes necessary to compute the value of the sovereign or pound sterling, it shall be deemed equal to four dollars and eighty-six cents and six and one-half mills, and the same rule shall be applied in appraising merchandise imported where the value is, by the invoice, in sovereigns or pounds sterling," etc. The remainder of the section is unimportant in connection with the subject under consideration.

The third section repeals all acts and parts of acts inconsistent with these provisions.

Previous to this legislation Congress had from time to time fixed by statute the rates at which certain foreign coins shall be estimated in computations made at the custom houses—(see section 18, act of July 31, 1789, chapter 5; section 40, act August 4, 1790, chapter 35; section 61, act of March 2, 1799, chapter 22; section 1, act of March 3, 1801, chapter 28; section 1, act of July 27, 1842, chapter 66; act of March 3, 1843, chapter 92; act of May 22, 1846, chapter 23; act of March 2, 1861, chapter 751)—and these coins, as it would seem, comprised the principal foreign coins known to our commerce. By a provision in section 61 of the act of March 2, 1799, cited above, all other denomina-

tions of foreign money were required to be estimated in value as nearly as might be to those rates, or according to the intrinsic value thereof, compared with money of the United States. In this connection I may also add that the last-mentioned section authorized the President "to cause to be established fit and proper regulations for estimating the duties on goods, wares and merchandise imported into the United States, in respect to which the original cost shall be exhibited in a depreciated currency issued and circulated under authority of any foreign government."

The statutes referred to, it will be observed, comprehended all foreign coins, giving a specific value to those which were enumerated therein, and prescribing the mode by which the value of those not enumerated should be estimated.

Besides the foregoing provisions, which had for their object the ascertainment of the actual value of the merchandise imported at the place of its importation, there were other provisions not in any way connected with the former, which permitted the payment of duties and fees at the custom houses in certain foreign coins, at rates specifically set forth (see section 30, act of July 31, 1789, chapter 5; section 56, act of August 4, 1790, chapter 35; section 74, act March 2, 1799, chapter 22); subject, however, to a proviso in the section last cited, by which no foreign coins were receivable which were not by law "a tender for the payment of all debts, except in consequence of a proclamation of the President of the United States, authorizing such foreign coins to be received in payment of the duties and fees aforesaid."

Laws were passed by Congress, both before and after the date of the enactment just mentioned, regulating the value of certain denominations of foreign coins for the purpose of currency, and making them a legal tender at the rates prescribed for the payment of all debts and demands (see act of February 9, 1793, chapter 5; act of February 1, 1798, chapter 11; act of April 10, 1806, chapter 22; act of April 29, 1816, chapter 139; act of March 3, 1819, chapter 97; act of March 3, 1821, chapter 53; act of March 3, 1825, chapter 50; act of June 25, 1834, chapter 71; act of June 28, 1834, chapter 96; act of March 3, 1843, chapter 69). But by the third section of the act of February 21, 1857, chapter 56, "all former acts authorizing the currency of foreign gold or silver coins, and declaring the same a legal tender in payment for debts," were repealed; and thereupon, as it would seem by operation of the aforesaid proviso, in section 74 of the act of March 2, 1799, foreign coins ceased to be receivable in payment of duties, at least in cases not falling within the exception contained in the proviso.

Thus the effect of the act of 1857 was practically to do away with all previous legislation respecting the valuation of foreign coins, except the provisions which were passed for the purpose of fixing or ascertaining the rates at which such coins should be estimated at the custom houses in computing duties payable on imported merchandise.

It is very manifest that among the ends sought to be accomplished by the act of March 3, 1873, was that of introducing a modification of, or superseding altogether the laws previously in force in relation to estimating the value of foreign coin, and the provisions just referred to may be said to supply the only matter of this sort found in those laws upon which that act could operate. These provisions, as I have already stated, gave a specific value to the various coins enumerated therein, which embraced the principal foreign coins known to our commerce, and also prescribed how the value should be estimated of all foreign money not therein enumerated.

The inquiry now presents itself, whether the act of 1873 was intended to have a general application, and thus include both the enumerated coins in the former law, or whether it was designed to limit in its application to coins of one of those classes only.

That statute declares in the first section, "that the value of foreign coins, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value." This language is certainly broad enough to comprehend all foreign coins, as well those enumerated as those not enumerated in the pre-existing laws; and, taken in connection with the clause immediately following in the same section, there would seem to be no room for doubt that it was meant to have a corresponding effect. This clause reads: "And the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the director of the mint, and be proclaimed on the first day of January by the secretary of the treasury." Here all foreign standard coins in circulation are obviously contemplated, and it is plain that their values are to be estimated upon the basis prescribed by the provision of the statute quoted above—that is to say, according to the value of the pure metal of such coin of standard value. Hence this provision must be deemed to be applicable to all standard foreign coins in circulation, and, as a necessary result, to supersede entirely the provisions of the previous laws above adverted to.

The first clause of the first section of the act of 1873 should be understood as furnishing the general rule by which the value of foreign coin, when expressed in money of account of the United States, is to be estimated.

The next clause makes provision for officially estimating and announcing the value of such coin. The latter clause was clearly intended to supplement the former, and provide a mode for giving it effect practically. But from the operation of the general rule prescribed by that section, the sovereign or pound sterling of Great Britain is excepted, as the second section of the act contains a special provision for computing the value thereof.

With regard to the question submitted in your letter, then, I am led by the foregoing considerations to the conclusion that the secretary of the treasury is authorized to direct the computations of the values of foreign coins at the custom houses, when such values are to be expressed in the money of account of the United States, to be made according to the values officially estimated, and proclaimed agreeably to the provisions of the first section of the act of 1873, excepting only the sovereign or pound sterling of Great Britain, the value whereof must be computed as the same is fixed by the second section of that act.

I am, sir, very respectfully,

(Signed) GEORGE H. WILLIAMS,
Attorney-General.

EXHIBIT K.

Circular exhibiting the values in United States money of account of the pure gold or silver representing, respectively, the monetary units of foreign countries, and proclaiming the value of the standard coins in circulation of the various nations of the world, in compliance with the Act of March 3, 1873.

1873.
DEPARTMENT No. 145.
Mint Bureau No. 6.

TREASURY DEPARTMENT,
WASHINGTON, D. C., January 1, 1874,

The first section of the Act of March 3, 1873, provides "that the value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value," and that "the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January, by the Secretary of the Treasury." The following tables have been prepared and are published in compliance with the above stated provisions of law:

TABLE A.—*Values, in United States money of account, of the pure gold or silver representing the monetary units, respectively, of foreign countries.*

Country.	Monetary unit.	Standard.	Value in U. S. money of account.
Argentine Republic	Peso fuerte	Gold	$1.00,00
Austria	Florin	Silver	.47, 60
Belgium	Franc	Gold and silver.	.19, 30
Bolivia	Dollar	Silver	.96, 50
Brazil	Milreis of 1,000 reis	Gold	.54, 56
British Possessions in North America	Dollar	Gold	1.00, 00
Central America	Dollar	Silver	.96, 50
Chili	Peso	Gold	.91, 23
China	Cash	Copper	.....
Cuba	Peso	Gold	.92, 58
Denmark	Crown	Gold	.26, 80
Ecuador	Dollar	Silver	.96, 50
Egypt	Dollar of 20 piasters	Silver	1.00, 39
France	Franc	Gold and silver.	.19, 30
Great Britain	Pound sterling	Gold	4.86, 65
Greece	Drachma	Silver	.19, 30
German Empire	Mark	Gold	.23, 82
Hayti	Dollar	Silver	1.00, 00
Jamaica	Pound sterling	Gold	4.86, 65
Japan	Yen	Gold	.99, 70
India	Rupee of 16 annas	Silver	.45, 84
Italy	Lira	Gold and silver.	.19, 30
Liberia	Dollar	Gold	1.00, 00
Mexico	Dollar	Silver	1.04, 75
Netherlands	Florin	Silver	.40, 50
Norway	Crown	Gold	.26, 80
Paraguay	Peso	Gold	1.00, 00
Peru	Dollar	Silver	.96, 50
Porto Rico	Peso	Gold	.92, 58
Portugal	Milreis of 1,000 reis	Gold	1.08, 47
Russia	Roubles of 100 copecks	Silver	.77, 17
Sandwich Islands	Dollar	Gold	1.00, 00
Spain	Peseta of 100 centimos	Gold and silver.	.19, 30
Sweden	Crown	Gold	.26, 80
Switzerland	Franc	Gold and silver.	.19, 30
Tripoli	Mahbub of 20 piasters	Silver	.87, 09
Tunis	Piaster of 16 caroubs	Silver	.12, 50
Turkey	Piaster	Gold	.04, 39
United States of Colombia	Peso	Silver	.96, 50
Uruguay	Patacon	Gold	.94, 98
Venezuela	Peso	Silver	.77, 73

NOTE.—Where silver is the legal standard, and represents the unit of account, its value is reduced to the basis of gold, on the assumption that the ratio of 15½ to 1 represents the relative values of silver and gold.

TABLE B.—*Weight, Fineness and Value of Foreign Coins, as determined by United States Mint Assays.*

EXPLANATORY REMARKS.

1. The weight is expressed in fractions of an ounce troy, agreeing with the terms used in the United States mints.

If it is desired to have the weight of any piece in grains, regard the thousandths of an ounce as integers, take their half, from which deduct four per cent. of that half, and the remainder will be grains.

2. The fineness is expressed in thousandth parts, *i. e.*, so many parts of pure gold or silver in 1,000 parts of the coin. The old carat system is generally abandoned (except for jewelry), but it may be worth while to say that $41\frac{2}{3}$ thousandths equal one carat.

3. The valuation of gold is a direct calculation from weight and fineness, at the legal rate of 25.8 grains, 900 fine, being equal to one dollar; or $20.672 (nearly) per ounce of fine gold.

Foreign coins, if converted into United States coins, will be subject to a charge of one-fifth of one per cent.

4. For the silver there is no fixed legal valuation as compared with gold. The value of the silver coins is computed at the rate of 120 cents per ounce, 900 fine, payable in subsidiary silver coin, that having been the mint price when the assays were made.

The gold value of silver is to be found in the bullion markets; at present it is about 113 cents per ounce, 900 fine.

5. These tables generally give the one principal coin of each country, from which the other sizes are easily deduced. Thus when the franc system is used, there are generally gold pieces of 40, 20, 10, and 5 francs, all in due proportion. But in silver the fractional coins are very often of less instrinsic value than the normal coin, proportionally. These are seldom exported.

GOLD COINS.

Country.	Denomination.	Weight.	Fineness.	Value in U. S. gold coin.		
		Ounces.	*Thousandths.*	*Dolls.*	*cts.*	*mills.*
Austria	Fourfold ducat	0. 448	986	9	13	2
Do	Souverain (no longer coined)	0. 363	900	6	75	4
Do	4 florins, (new)	0. 104	900	1	93	5
Belgium	25 francs	0. 254	899	4	72	0
Brazil	20 milreis	0. 575	916, 5	10	89	4
Central America	2 escudos	0. 209	853, 5	3	68	8
Do	4 reals	0. 027	875	0	48	8
Chili	10 pesos, (dollars)	0. 492	898	9	13	6
Colombia and South America generally	Old doubloon*	0. 867	870	15	50	3
Denmark	Old 10 thaler	0. 427	895	7	90	0
Egypt	Bedidlik, (100 piasters)	0. 275	875	4	97	4
England	Pound or sovereign, (new)†	0. 256, 8	916, 5	4	86	5
Do	Pound average, (worn)	0. 256, 3	916, 5	4	85	6
France	20 franc, (no new issues)	0. 207	899	3	84	7
Germany	Old 10 thaler, (Prussian)	0. 427	903	7	97	1
Greece	20 drachms	0. 185	900	3	44	2
India, (British)	Mohur, or 15 rupees‡	0. 375	916, 5	7	10	5
Italy	20 lire, (francs)	0. 207	899	3	84	7
Japan	Cobang, (obsolete)	0. 289	572	3	57	6
Do	New 20 yen	1. 072	900	19	94	4
Mexico	Old doubloon, (average)	0. 867	870	15	59	3
Do	20 pesos, (empire)	1. 086	875	19	64	3
Do	20 pesos, (republic,) new	1. 081	873	19	51	5
Netherlands	10 guilders	0. 215	899	3	99	7
New Granada	10 pesos, (dollars)	0. 525	891, 5	9	67	5
Peru	20 soles	1. 055	898	19	21	3
Portugal	Coroa, (crown)	0. 308	912	5	80	7
Russia	5 roubles	0. 210	916	3	97	6
Spain	100 reales	0. 268	896	4	96	4
Do	80 reales	0. 215	869, 5	3	86	4
Do	10 escudos	0. 270, 8	896	5	01	5
Sweden	Ducat	0. 111	975	2	23	7
Do	Carolin, (10 francs)	0. 104	900	1	93	5
Tunis	25 piasters	0. 161	900	2	99	5
Turkey	100 piasters	0. 231	915	4	37	0

* The *doubloon* (doblon, or more properly *onza*, though not really an ounce Spanish) is now generally discontinued. These figures answer as well for the doubloon of Peru, Chili, Bolivia, &c., and therefore this item stands for all. Popayan pieces were rather inferior.

† The sovereigns coined at Melbourne and Sydney, in Australia, and distinguished only by the mint marks M and S, are the same as those of the London mint. Sovereigns generally are up to the legal fineness, 916⅔ (or 22 carats).

‡ The last coinage of *mohurs* was in 1862.

SILVER COINS.

Country.	Denomination.	Weight.	Fineness.	Value in subsidiary silver coin.
		Ounces.	*Thousandths.*	*Dolls. cts. mills.*
Austria	Old rix dollar	0.902	833	1 00 2
Do	Old scudo, (crown)	0.836	902	1 00 5
Do	Florin, before 1858	0.451	833	0 50 1
Do	New florin	0.397	900	0 47 6
Do	New union dollar	0.596	900	0 71 5
Do	Maria Theresa dollar, 1780	0.895	838	1 00 0
Belgium	5 francs	0.803	897	0 96 0
Do	2 francs	0.320	835	0 35 6
Bolivia	New dollar	0.801	900	0 96 1
Brazil	Double milreis	0.820	918, 5	1 00 4
Canada	20 cents	0.150	925	0 18 5
Do	25 cents	0.187, 5	925	0 23 1
Central America	Dollar	0.866	850	0 98 1
Chili	Old dollar	0.864	908	1 04 6
Do	New dollar	0.801	900, 5	0 96 2
China	Dollar, (English mint)	0.866	901	1 04 0
Do	10 cents	0.087	901	0 10 5
Denmark	2 rigsdaler	0.927	877	1 08 4
Egypt	Piaster, (new)	0.040	755	0 04 0
England	Shilling, (new)	0.182, 5	924, 5	0 22 5
Do	Shilling, (average)	0.178	925	0 21 9
France	5 franc, (average)	0.800	900	0 96 0
Do	2 franc	0.320	835	0 35 6
North German States	Thaler, (before 1857)	0.712	750	0 71 2
Do	Thaler, (new)	0.595	900	0 71 4
South German States	Florin	0.340	900	0 40 8
German Empire	5 marks, (new)	0.804	900	0 96 5
Greece	5 drachms	0.719	900	0 86 3
Hindostan	Rupee	0.374	916, 5	0 45 7
Italy	5 lire	0.800	900	0 96 0
Do	Lira	0.160	835	0 17 8
Japan	Itzebu, (no longer coined)	0.279	890	0 33 1
Do	1 yen	0.866, 7	900	1 04 0
Do	50 sen	0.402	800	0 42 8
Mexico	Dollar, (average)	0.866	901	1 04 0
Do	Peso of Maximilian	0.861	902, 5	1 03 6
Netherlands	2½ guilders	0.804	944	1 01 2
Norway	Specie daler	0.927	877	1 08 4
New Granada	Dollar of 1857	0.803	896	0 96 0
Peru	Old Dollar	0.866	901	1 04 3
Do	Dollar of 1858	0.766	909	0 92 8
Do	Half-dollar of 1836-'38	0.433	650	0 37 5
Do	Sol	0.802	900	0 96 0
Portugal	500 reis	0.400	912	0 48 6
Romania	2 lei, (francs), new	0.322	835	0 35 8
Russia	Rouble	0.667	875	0 77 8
Spain	5 Pesetas, (dollar)	0.800	900	0 96 0
Do	Peseta, (pistareen)	0.160	835	0 17 8
Sweden	Ricksdaler	0.273	750	0 27 3
Switzerland	2 francs	0.320	835	0 35 6
Tunis	5 piasters	0.511	898, 5	0 61 2
Turkey	20 piasters	0.770	830	0 85 2

WM. A. RICHARDSON,
Secretary of the Treasury.

EXHIBIT L.

Exhibit, showing the difference between the duties chargeable on the articles named below, imported from France—(1) by estimating the value of the franc at $18\frac{6}{100}$ *cents, as fixed by the Act of May* 22, 1846 *: and (2) by estimating the value of the franc at* $19\frac{30}{100}$ *cents, the rate fixed by the circulars of the Secretary of the Treasury, dated December* 20, 1873, *and January* 1, 1874, *purporting to be issued under the authority of* § 1 *of the Act of Congress, passed March* 3, 1873.

Dress Goods.

The Act of March 2, 1867, section 2 (14 Stat. at Large, 561), provides "On women's and children's dress goods * * * composed wholly "or in part of wool, worsted, the hair of the alpaca goat, or other like "animals, valued at not exceeding twenty cents per square yard, six "cents per square yard, and in addition thereto, thirty-five per cent. "*ad valorem ;* valued at above twenty cents the square yard, eight cents "per square yard, and, in addition thereto, forty per cent. *ad valorem.*"

The Act of June 6, 1872, section 2 (17 Stat. at Large, 230), provides for a reduction of duties on these articles of "ten per centum of such duties."

The first importation mentioned in the agreed statement of facts, the one per *Pereire*, consisted of 5,316 square yards, the dutiable value of which was 5,629.30 francs. This sum reduced to United States money, at the rate fixed by the Act of 1846 ($18\frac{6}{100}$ cents) is equal to $1,047.00, which divided by the total number of square yards (5,316) shows the value of one square yard to be $19\frac{6}{100}$ cents. The importation was, therefore, liable to duty at the rate of six cents per square yard and thirty-five per centum *ad valorem*, with a reduction of ten per centum "of such duty," provided in the Act of 1872. Calculating the duties at these rates, the importation was liable to pay $616.43.

But the amount of the invoice in francs, reduced to United States money, at the rate claimed in the circulars of the secretary of the treasury ($19\frac{30}{100}$ cents) is equal to $1,076.45. This sum, divided by the number of square yards (5,316), shows the value of one square yard to be $20\frac{24}{100}$ cents, and the importation was, therefore, subject to duty at the rate of eight cents per square yard and forty per centum *ad valorem*, with a reduction of ten per centum "of such duties," as provided by the Act of 1872. Calculating duties at these rates, the im-

portation was liable to pay $773.72, instead of $616.43. The difference, $157.29, is equal to $25\frac{51}{100}$ per centum of the duties to which the merchandise was liable, reducing the franc to United States money, at the rate fixed by the Act of 1846.

Linens, Lawns, and Manufactures of Flax.

The Act of June 30, 1864, section 7 (13 Stat. at Large, 209), provides that there shall be paid "First, on brown and bleached linens * * * "lawns, or other manufactures of flax, jute or hemp, or of which flax, "jute or hemp shall be the component material of chief value, not "otherwise provided for, valued at thirty cents, or less, per square "yard, thirty-five per centum *ad valorem:* valued at above thirty cents "per square yard, forty per centum *ad valorem.*"

An invoice of 1,000 square yards, costing 1,600 francs, reduced to United States money, at the rate fixed by the Act of 1846 ($18\frac{6}{10}$ cents), will cost $297.60. This sum, divided by the number of square yards of the invoice (1,000) shows the value of one square yard to be $29\frac{76}{100}$ cents. The merchandise is, therefore, liable to duty at the rate of thirty-five per centum *ad valorem*, as follows, viz., invoice value $297.60 at 35 % = 104.16.

The value in United States money of the same invoice, reducing the francs to dollars, at the rate claimed in the treasury circulars, is $308.80, equivalent to $30\frac{88}{100}$ cents per square yard. The merchandise would, therefore, be liable to duty at the rate of forty per centum *ad valorem*, as follows, viz.: Invoice value $308.80, at 40 p. c. = $123.52. The difference, $19.36, is equivalent to an increase of $18\frac{50}{100}$ per cent. of the duties.

Wines.

The Act of July 14, 1870, section 21 (16 Stat. at Large, 262), provides that there shall be paid "on all wines imported in casks, contain-"ing not more than twenty-two per centum of alcohol, and valued at not "exceeding forty cents per gallon, twenty-five cents per gallon; valued "at over forty cents, and not over one dollar per gallon, sixty cents per "gallon."

An invoice of 1,000 gallons of wine costing 2,110 francs, reduced to United States money at the rate fixed by the act of 1846 ($18\frac{6}{10}$ cents), would cost $392.46, equivalent to $39\frac{24}{100}$ cents per gallon, and would, therefore, be liable to duty at the rate of twenty-five cents per gallon,

as follows: 1,000 gallons, valued not exceeding forty cents, at 25 cents per gallon, $250.00.

The value in United States money of the same invoice, reducing the francs to dollars at the rate claimed in the circulars of the Secretary of the Treasury is $407.23, equivalent to $40\frac{72}{100}$ cents per gallon. The wine would, therefore, be liable to duty at the rate of sixty cents per gallon, as follows: 1,000 gallons, "valued at over forty cents" at sixty cents per gallon—$600.

The difference, $350, is equivalent to an increase of 140 per centum of the duties.

U. S. Circuit Court,

SOUTHERN DISTRICT OF NEW YORK.

APRIL TERM, 1874.

AUGUSTE RICHARD, *et al.*

vs.

CHESTER A. ARTHUR.

Opinion of the Court.

Shipman, J:

This action was tried by the court, a jury having been waived by written stipulation of the parties. The following statement of facts was agreed to by the parties, and is found by the court to be true :

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

April Term, 1874.

AUGUSTE RICHARD AND OTHERS

vs.

CHESTER A ARTHUR.

Agreed Statement of Facts.

This is an action at law brought to recover from the defendant, Collector of the Customs at the Port of

New York, an alleged excess of duties on imported goods exacted by the defendant and paid by the plaintiffs under protest.

On the 16th day of March, 1874, the plaintiffs entered at the Custom House an invoice of all wool dress goods imported from France, in the steamship *Pereire*, from Havre, the value of which was invoiced in francs of the currency of France, amounting, together with the charges and commissions, to 5,629.30 francs. By an Act of Congress passed May 22d, 1846, § 1 (9 Stats. at Large, p. 14), in force at the time of the passage of the act of March 3, 1873, hereinafter referred to, it was provided that "in all computations at "the Custom House, the franc of France and of Bel- "gium, shall be estimated at 18 cents 6 mills." At this rate of estimation of the French franc in money of account of the United States, the dutiable value of these goods consisting of 5,316 square yards, was $1,047, or less than 20 cents per square yard. By the tariff act of March 2, 1867, § 2, goods of this description, when the dutiable value is less than 20 cents per square yard, are subject to an *ad valorem* duty of 35 per cent., and an additional duty of 6 cents per square yard; but from this amount 10 per cent. is to be deducted by the operation of an act passed June 6th, 1872. Computing the franc at $18\frac{6}{10}$ cents, the amount of duty that could be levied on the 5,316 square yards of the above mentioned importation was $616.43.

March 3, 1873, Congress passed an act, entitled "An Act to establish the Custom House value of the "sovereign or pound sterling of Great Britain, and "to fix the par of exchange" (17 Stat. at Large, p. 602). Prior to the 1st day of January, 1874, the director of the Mint, acting under section 1 of this law, estimated and prepared two tables, respectively marked A and B, in the circular of January 1, 1874, hereinafter mentioned. On the 20th of December, 1873, the secretary of the treasury issued to the col-

lectors of customs, including the defendant, a circular letter of instructions, embodying the table A, a copy of which is hereto annexed. On the 1st day of January, 1874, the secretary of the treasury, by a circular letter of that date, a copy of which is hereto annexed, proclaimed the tables A and B, theretofore prepared by the director of the Mint, in compliance with the provisions of the first section of the aforesaid act of March 3, 1873.

The defendant, claiming to act under the instructions of the secretary of the treasury, given in and by the circulars aforesaid, in determining the dutiable value of the plaintiffs' goods, estimated the franc at 19.30 cents, which estimate carried the dutiable value of the goods above 20 cents per square yard, and by the provisions of the existing tariff laws subjected them to an *ad valorem* duty of 40 per cent., and an additional duty of 8 cents per square yard, less ten per cent., to be deducted under the operation of the act of June 6th, 1872. Computing the franc at 19.30 cents, the amount of duty that could be levied on the 5,316 square yards, of the above-mentioned importation, was $773.72, which amount the defendant exacted, and the plaintiffs paid, under protest—the plaintiffs claiming that the franc should have been estimated at $18\frac{6}{10}$ths cents, and no more. The plaintiffs claim to recover the difference between the amount of duties which they offered to pay and the amount exacted from them, namely $157.29.

On the 7th day of April, 1874, the plaintiffs made a subsequent entry of goods of the same description, also, imported from France, in the steamship *Silesia*, from Hamburg, the value of which was also invoiced in francs, of the currency of France, amounting, together with the charges and commissions, to 11,297.55 francs. Under the act of May 22d, 1846, § 1, above referred to, estimating the franc at 18 cents 6 mills in money of account of the United States, the dutiable value of the last mentioned goods, consisting of 10,650

square yards, was $2,101, or less than 20 cents per square yard, and at such dutiable value the goods were subject, by the existing tariff acts, to an *ad valorem* duty of 35 per cent., and an additional duty of 6 cents per square yard, less 10 per cent., to be deducted as above mentioned. Computing the franc at $18\frac{6}{10}$ cents, the amount of duty that could be levied on 10,650 square yards of these goods, was $1,236.92. The defendant, claiming to act under section 1 of the act of March 3, 1873, above referred to, and under the treasury instructions above referred to, in determining the dutiable value of the plaintiffs' last mentioned goods, estimated the franc at 19.30 cents, which estimate carried the dutiable value of the goods above 20 cents per square yard, and by the provisions of the existing tariff laws subjected them to an *ad valorem* duty of 40 per cent., and an additional duty of 8 cents per square yard, less 10 per cent., to be deducted as above mentioned. Computing the franc at 19.30 cents, the amount of duty that could be levied on the 10,650 square yards of this importation was $1,552.60, which amount the defendant exacted and the plaintiffs paid, under protest, the plaintiffs claiming that the franc should have been estimated at 18 6-10 cents, and no more. The plaintiffs claim to recover the difference between the amount of duties which they offered to pay, and the amount exacted from them, namely $315.68.

It is agreed that in respect to both of the above mentioned exactions of duties, the plaintiffs duly and seasonably protested upon the ground that in ascertaining the dutiable value of their goods, the franc of France could not be lawfully estimated in money of account of the United States, for the purpose of levying duties on imported goods, at more than $18\frac{6}{10}$ cents; also that from the decision of the defendant, estimating the franc at 19.30 cents, the plaintiffs duly and seasonably appealed to the secretary of the treasury, and that the secretary affirmed the decision

of the defendant and dismissed the appeal, before the present action was brought. And that this suit was brought within the time prescribed by law.

Either party may read in evidence at the trial any papers from the Custom-house relating to the above mentioned importations, which will be competent evidence on the trial of the issue in this action, and may also read or refer to the circular instructions of the secretary of the treasury above referred to.

The case shall be submitted to the court on the pleadings and the foregoing statement of facts. If the court shall find, as matter of law, that in determining the dutiable value of the said several importations the defendant ought to have estimated the franc at $18\frac{6}{10}$ cents, judgment shall be entered for the plaintiffs in the sum of $472.97, with interest, as damages, with costs. But if the court shall find, as matter of law, that in determining the dutiable value of the said several importations, the defendant could rightfully estimate the franc at 19.30, cents judgment shall be entered for the defendant, with costs.

Dated, New York, May 28, 1874.

GEORGE BLISS,
U. S. Atty.

WEBSTER & CRAIG,
Plaintiffs' Attys.

The act of May 22d, 1846 (9 Stats. at Large, p. 14), provided "That in all computations at the Custom-house, the foreign coins and money of account herein specified shall be estimated as follows, to wit, * * *" "the franc of France and of Belgium, and the lira of Sardinia, at eighteen cents six mills." * * *

The act of March 3d, 1873 (17 Stat. at Large, p. 602), entitled "An Act to establish the Custom-house value of the sovereign or pound sterling of Great Britain, and to fix the par of exchange," is as follows:

"Be it enacted, &c.

SECTION 1. That the value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value and the values of the standard coins in circulation of the various nations of the world shall be estimated annually, by the director of the Mint, and proclaimed on the first day of January by the secretary of the treasury.

SEC. 2. That in all payments by or to the treasury, whether made here or in foreign countries, when it becomes necessary to compute the value of the sovereign or pound sterling, it shall be deemed equal to four dollars eighty-six cents, and six and one-half mills, and the same rules shall be applied in appraising merchandise imported, when the value is by the invoice in sovereigns or pounds sterling, and in the construction of contracts payable in sovereigns or pounds sterling; and this valuation shall be the par of exchange between Great Britain and the United States; and all contracts made after the first day of January, eighteen hundred and seventy-four, based on an assumed par of exchange with Great Britain, of fifty-four pence to the dollar, or four dollars forty-four and four-ninth cents, to the sovereign or pound sterling, shall be null and void.

SEC. 3. That all acts and parts of acts inconsistent with these provisions be, and the same are hereby, repealed."

The sole question of law which I shall consider is, whether the effect of the first and third sections of the Act of 1873 was to repeal the Act of 1846, and to substitute in all computations at the Custom House, for the valuation of foreign coins, which had been previously prescribed by statute, the valuation according to standard value, annually estimated by the director

of the Mint, and proclaimed by the secretary of the treasury.

It is apparent from an examination of the second section of the Act of 1873, that the intention of Congress was to make a complete change for all commercial purposes in the valuation of the pound sterling. In addition to the provision "that in all payments by or to the treasury, whether made here or in foreign countries," the value of the sovereign shall be deemed equal to 4.86.6½; it is also expressly declared that "the same rule shall be applied in appraising merchandise imported when the value is, by the invoice, in sovereigns or pounds sterling." Apt, appropriate and definite language was here used to declare the radical change effected by the section and indicated by the title of the bill. The claim of the defendant is that the same change is wrought, in regard to the value of all other foreign coins of the various nations of the world, by the general provision of the first section—"the value of foreign coin as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value."

It was not denied upon the trial that the effect of this construction of the first section would be to materially increase the amount of duties imposed by the *ad valorem* tariff, where the rate is upon a sliding scale in proportion to the value of the article. The duty is raised upon one class of articles eighteen per cent.; upon another class twenty-five per cent.; upon other classes a still higher per centage, and the aggregate result would be to increase the amount of duties annually millions of dollars.

Such a change, in regard to the pound sterling, was unmistakably intended and made by the second section of the act in question. If the same purpose existed in regard to other coins, why was not the intent expressed in similar decisive terms? The entirely different phraseology of the two sections of the act suggests the conclusion that the object of each section was not the same.

In considering the question more closely, it is apparent that if the Act of May 22d, 1846, and other statutes providing for the valuation of foreign coins in Custom House computations are repealed by the first and third sections of the Act of March 3d, 1873, such repeal is by implication only.

The rule in regard to repeals by implication is laid down in U. S. *vs.* Tynen, 11 Wallace, p. 92, as follows: "It is a familiar doctrine that repeals by implication are not favored. When there are two acts on the same subject the rule is to give effect to both if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first, and even where two acts are not in express terms repugnant, yet, if the latter covers the whole subject of the first, and embraces new provisions plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act."

And in Henderson's Tobacco, 11 Wallace, 652, Mr. Justice Strong, in re-asserting the rule, adds: "It must be observed that the doctrine asserts no more than that the former statute is repealed so far as the provisions of the subsequent statute are repugnant to it, or so far as the latter statute, making new provisions, is plainly intended as a substitute for it."

In order, then, to ascertain whether the act of 1873 is a repeal by implication of the previous acts, upon the subject of the valuation for custom-house purposes, of foreign coins other than the pound sterling, an examination of the legislation of Congress in regard to foreign coins becomes necessary.

Such examination discloses the fact, that from the earliest history of the government to a comparatively recent period, three classes of laws in regard to foreign coins have existed, each class having a distinct and separate object.

The first class embraces those laws which were passed to fix the rate at which foreign denominations

of money are to be computed in American money at the custom-house, for the purpose of ascertaining the dutiable value of imported merchandise.

Congress commenced as early as 1789 the system of collecting a revenue by means of duties upon imported goods, the duties to be computed upon the values of the goods in currency of the United States. Foreign invoices stated the values in the currency of the respective countries from which the goods were imported, and it of course became necessary to transmute these values thus stated into the currency of this country.

Hence the 18th section of the act of July 31st, 1789, which was an act to regulate the collection of duties upon imported goods, provided "that all foreign coins and currencies shall be estimated according to the following rates: each pound sterling of Great Britain at four dollars forty-four cents; each livre tournois of France at eighteen cents and a half." * * * Similar legislation was had in the acts of Aug. 4th, 1790, of March 2 l, 1799, and in various years thereafter, including the act of May 22d, 1846, until the second section of the act of March 3d, 1873, which, as has been said, specifically provides that the valuation therein given to the sovereign shall be applied to the valuations stated in the invoices at the custom-house.

The statutes of this class are those of July 31st, 1789, § 18, 1 Stat. at Large, p. 41; August 4th, 1790, § 40, 1 Stat. at Large, p. 167; March 2, 1799, § 61, 1 Stat. at Large, p. 673; March 3d, 1801, §§ 1, 2, 2 Stats. at Large, p. 121; July 27th, 1842, §§ 1, 2, 5 Stats. at Large, p. 496; March 3d, 1843, 5 Stat. at Large, p. 625; May 22d, 1846, 9 Stat. at Large, p. 14; March 2d, 1861, 12 Stat. at Large, p. 207; March 3d, 1873, § 2, 17 Stat. at Large, p. 602.

Each of the various acts in this class either referred in direct terms to the valuation of foreign coins for custom-house purposes, or are parts of general statutes imposing duties upon foreign goods, and obviously re-

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Hence the 18th section of the act of July 31st, 1789, which was an act to regulate the collection of duties upon imported goods, provided "that all foreign coins and currencies shall be estimated according to the following rates: each pound sterling of Great Britain at four dollars forty-four cents; each livre tournois of France at eighteen cents and a half." * * * Similar legislation was had in the acts of Aug. 4th, 1790, of March 2 l, 1799, and in various years thereafter, including the act of May 22d, 1846, until the second section of the act of March 3d, 1873, which, as has been said, specifically provides that the valuation therein given to the sovereign shall be applied to the valuations stated in the invoices at the custom-house.

The statutes of this class are those of July 31st, 1789, § 18, 1 Stat. at Large, p. 41; August 4th, 1790, § 40, 1 Stat. at Large, p. 167; March 2, 1799, § 61, 1 Stat. at Large, p. 673; March 3d, 1801, §§ 1, 2, 2 Stats. at Large. p. 121; July 27th, 1842, §§ 1, 2, 5 Stats. at Large, p. 496; March 3d, 1843, 5 Stat. at Large, p. 625; May 22d, 1846, 9 Stat. at Large, p. 14; March 2d, 1861, 12 Stat. at Large, p. 207; March 3d, 1873, § 2, 17 Stat. at Large, p. 602.

Each of the various acts in this class either referred in direct terms to the valuation of foreign coins for custom-house purposes, or are parts of general statutes imposing duties upon foreign goods, and obviously re-

late exclusively to the appraisal of merchandise when the value is by the invoice in foreign coin.

For example: the act of July 27th, 1842 (5 Stats. at Large, p. 496), provides that in all payments by or to the treasury, when it becomes necessary to compute the value of the pound sterling, it shall be deemed equal to $4.84, "and the same rule shall be applied in appraising merchandise imported when the value is by the invoice in pounds sterling."

The language used in other statutes is of the following kind: "In all computations of the value of foreign moneys of accounts at the custom-house of the U. S.:" "in the computation of duties:" "in computation at the custom-house."

Congress thus adopted an exact, well-defined and uniform system for the ascertainment at the custom-house of the dutiable value of foreign goods, which system, as will be seen, has always materially differed from the system of valuation placed upon foreign coins for the payment of debts.

In the infancy of the government, and until recently, foreign coin was in common circulation in this country. The duties under the revenue acts were payable in gold and silver coin, and hence it became necessary to establish the rates at which coin of other countries should be received in payment of debts to the government, and also as legal tender in payment of debts to individuals. Statutes establishing these rates constitute the second class of legislation on the subject of foreign coinage.

Thus the 30th section of the Act of July 31st, 1789, the same act from which I have heretofore cited, provided that "the duties and fees to be collected by virtue of this act shall be received in gold and silver coin only, at the following rates, that is to say: the gold coins of France, England, Spain and Portugal, and all other gold of equal fineness, at eighty-nine cents for every pennyweight." The 18th section had provided, that all foreign coins and currencies shall be estimated

(for custom-house computations) according to a different rate. This section prescribes the rate at which coin shall be received in payment of the duties imposed, and the amount of which was ascertained by the aid of the 18th section. So the Act of February 9th, 1793 (1 Stats. at Large, p. 300), provides the rates at which foreign coins should be received as legal tender "for the payment of all debts and demands;" and a series of statutes of the same character was passed, from time to time, until the Act of February 21, 1857 (11 Stats. at Large, p. 163).

But it was never supposed that this class of acts, passed for the purpose of establishing the value of foreign coin, when used in payment to the government or between individuals, had any relation to the first mentioned class.

The second series was enacted for a different object and purpose.

For example, when Congress provided, by Act of March 3d, 1843 (5 Stats. at Lagre, p. 607), that the gold coins of Great Britain should be receivable by weight for the payment of all debts and demands at prescribed rates, such act evidently did not repeal the law of the previous year, by which the pound sterling was estimated for custom house purposes.

The second series of Statutes existed until the Act of Feb. 21st, 1857 (11 Stats. at Large, p. 163), the third section of which Act repealed "all former acts authorizing the currency of foreign gold or silver coins, and declaring the same a legal tender in payment for debts." The same section also provided that "it shall be the duty of the director of the Mint to cause assays to be made from time to time of such foreign coins as may be known to our commerce, to determine their average weight, fineness and value, and to embrace in his annual report a statement of the results thereof."

This provision was in continuation of the third series of laws which had been passed on the subject of foreign coinage, whereby the Mint was made the instrument for estimating the value of foreign coins.

Perhaps the germ of this class of legislation may be found in the last clause of the Act of Feb. 9th, 1793 (1 Stat. at Large, p. 300); the act which established the rates at which foreign coins should be received as legal tender, and which clause provided that "no foreign coin, that may have been or shall be issued subsequent to the 1st day of January, 1792, shall be a tender, as aforesaid, until samples thereof shall have been found by assay, at the Mint of the U. S., to be conformable to the respective standards required, and proclamation thereof shall have been made by the President of the United States." This provision simply had reference to the rate at which coins, the value of which was then unknown to Congress, should be received in payment of debts, but Congress thereafter provided in the Act of April 10th, 1806 (2 Stat. at Large, p. 374), as follows:

"And it shall be the duty of the Secretary of the Treasury to cause assays of the foreign gold and silver coins made current by this act to be had at the Mint of the United States, at least once in every year, and to make report of the result thereof to Congress, for the purpose of enabling them to make such alterations in this act, as may become requisite, from the real standard value of such foreign coins.

"And it shall be the duty of the Secretary of the Treasury to cause assays of the foreign gold and silver coins of the description made current by this act, which shall issue subsequently to the passage of this act, and shall circulate in the United States, at the mint aforesaid, at least once in every year, and to make report of the result thereof to Congress, for the purpose of enabling Congress to make such coins current, if they shall deem the same to be proper, at their real standard value."

With the clauses of the Act of 1806, just quoted, the third class of legislation in regard to coinage definitely commenced. This provision, passed for the purpose of furnishing information to Congress, by the aid of

which proper alterations might be made in the existing rates at which coins shall be received in payment of debts, continued until the Act of Feb. 21st, 1857, supplemented by similar acts of April 29, 1816, June 25th, 1834, and March 3, 1843.

The Act of February 21st, 1857, repealed all acts relating to the use of foreign coin as a legal tender, but continued the requirement upon the director of the Mint, to cause assays of foreign coins, to determine their average weight, fineness and value, and to report annually to Congress the result of such assays.

The object of this provisfon was not to ascertain the rates at which foreign coin should pass current in the country, for the use of foreign coin as currency ceased upon the passage of this statute, but it was obviously for the purpose of furnishing official information to Congress, to the various departments of government, so that their payments in foreign coin could be regulated, and to the public, so that courts and individuals should have accurate knowledge of the rate at which foreign coin should properly be estimated in our own currency.

These provisions of the acts of 1806 and of 1857, continued until the Act of March 3d, 1873, were annually complied with by the director of the Mint, and with the first class of laws, constituted after 1857, the only two existing series of statutes on the subject of foreign coin.

The question now is, whether the first section of the Act of 1873, is a repeal of the first class of laws, and of the entire system of valuation of foreign coins for custom-house purposes, or is the establishment of a new principle for the valuation of foreign coins for other purposes, and an instruction to the director of the Mint to make such new estimate in addition to or in alteration of the system of assays which had previously been the means of information which Congress and the public possessed in regard to the value of foreign coins.

I cannot think that Congress intended in the first clause of the section to repeal the exact and uniform system of Custom-house valuations which had existed since the year 1798, and to substitute therefor an entirely new system by which the valuation of foreign coins was to be annually estimated and annually proclaimed.

If Congress had intended such a change, it seems to me that they would have used apt and appropriate language, by which their intent would have been rendered obvious. Such language was within the reach of the draughtsman, and it was used in the second section.

It is true that the language of the section in question is positive and broad, "That the value of foreign coin as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value," but from the history of the legislation in regard to the subject of foreign coins, the intent and object of the laws seems to me to have been a modification of the third series of laws rather than of the first. Theretofore, the sole method of estimating values had been by assay of the coins in circulation; the director of the mint annually ascertained the average weight and fineness of the actual coin and communicated the result to Congress.

The valuation which these results placed upon foreign coins was the valuation known to the public, recognized by individuals and by the departments of the government; the valuation of foreign coin, as expressed in the money of account of the United States, was prior to the Act of 1873, the average of value of such coin in circulation as determined by annual assays.

Congress now establishes a new rule by which the director of the Mint is to be guided, and declares that the valuation which the government deems to be based upon a correct principle is the valuation of the ideal rather than the actual coin, and that thereafter the value shall be deemed that of the pure metal of such

coins of standard value; and in order that Congress and the public shall have knowledge of the valuations thus placed upon foreign coins, that the director of the Mint shall annually estimate, and the secretary of the treasury annually proclaim the result of the estimate.

The former plan was to ascertain values by assays of the coin in use.

That valuation was the official valuation furnished to Congress and the public. A new method and system of valuation is now prescribed to be made by the director of the Mint, to wit, that the value of foreign coin expressed in money of account of the United States shall be that of the pure metal of such coin, and that the new rule shall be annually reduced to practice, and its results communicated by the secretary of the treasury for the benefit of the public.

It may well be that Congress intended to impose upon the various departments the duty of making payments and of regulating their accounts with officers of the government abroad in accordance with the new rule.

This official valuation annually proclaimed may be the one by which courts should estimate the value of coins mentioned in contracts which are the subject of litigation. I do not think that it was intended to be the standard of values in a department of business for which a special series of acts has always made provision, and in which a special system of valuation has always existed different from the valuation imposed upon foreign coins when used as a legal tender.

The intent to repeal that series of acts does not plainly appear.

It may be claimed that the first section of the act under consideration is analagous to the provision contained in the 61st section of the Act of March 2d, 1799, "provided that it shall be lawful for the President of the United States to cause to be established fit and

proper regulations for estimating the duties on goods, wares and merchandize imported into the United States in respect to which the original cost shall be exhibited in a depreciated currency, issued and circulated under the authority of any foreign government."

It is to be observed that the proviso of the Act of 1799 had reference exclusively to the manner in which a confessedly depreciated currency issued under authority of any foreign government should be estimated, and was limited to such exceptional case. But not to dwell upon this suggestion, the object of this proviso was upon its face avowedly for the purpose of "estimating the duties on goods imported into the United States."

The question here is, whether the 1st section had any such object in view; whether the object was not totally different. Because the Act of 1799 specifically conferred upon the president the duty of establishing regulations for estimating the duties on goods in respect to which the cost shall be exhibited in a depreciated currency, it does not follow that the Act of 1873 conferred upon the secretary of the treasury power to proclaim annually the value at which all goods shall be estimated, when such power has not been conferred in terms.

My conclusion is, that the first section of the Act of March 3d, 1873, and the Act of May 22d, 1846, do not cover or embrace the same subject, and that the former section was not intended as a substitute for the Act of 1846, and kindred statutes, but was intended for other and different purposes than those which are specified in the class of statutes of which the Act of 1846, is a part. I am therefore of opinion that the Act of May 22d, 1846 is not repealed, and consequently, in determining the dutiable value of the several importations mentioned in the agreed statement of facts, the franc should have been estimated at $18\frac{6}{10}$ cents.

Let judgment be entered for the plaintiffs in the sum of $472 $\frac{97}{100}$, with interest and costs.

N. SHIPMAN,
Judge.

Filed July 20, 1874.

I, Kenneth G. White, clerk of the Circuit Court of the United States, for the Southern District of New York, do hereby certify that the foregoing is a true and correct copy of the original opinion of the court, on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 4th day of August, A. D. 1874.

KENNETH G. WHITE,
Clerk.